

**MEETING OF THE  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
WEDNESDAY, APRIL 22, 2020 - 5:15 P.M.  
COUNCIL CHAMBERS, THIRD FLOOR, CITY HALL  
AGENDA**

**CALL TO ORDER**

**PUBLIC TO ADDRESS THE COMMISSION**

**PUBLIC HEARINGS**

1. **RESOLUTION 20D-25: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH 1 LLC RELATED TO THE REBUILD DULUTH PROGRAM**
2. **RESOLUTION 20D-26: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH URBAN VENTURES LLC RELATED TO THE REBUILD DULUTH PROGRAM**
3. **RESOLUTION 20D-27: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH CABIN COLLECTIVE LLC RELATED TO THE REBUILD DULUTH PROGRAM**
4. **RESOLUTION 20D-28: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH NORTHERN AQ LLC RELATED TO THE REBUILD DULUTH PROGRAM**
5. **RESOLUTION 20D-29: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH FORD HOME COMPANY RELATED TO THE REBUILD DULUTH PROGRAM**
6. **RESOLUTION 20D-30: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH FORD HOME COMPANY RELATED TO THE REBUILD DULUTH PROGRAM**
7. **RESOLUTION 20D-31: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH PROGRAM**
8. **RESOLUTION 20D-32: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH PROGRAM**
9. **RESOLUTION 20D-33: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH PEYSER LLC RELATED TO THE REBUILD DULUTH PROGRAM**

10. **RESOLUTION 20D-34:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH SIMPLY TINY DEVELOPMENT LLC RELATED TO THE REBUILD DULUTH PROGRAM
11. **RESOLUTION 20D-35:** RESOLUTION APPROVING THE ISSUANCE AND SALE OF HEALTH FACILITIES REVENUE BONDS, SERIES 2020D (ESSENTIA HEALTH OBLIGATED GROUP)

**APPROVAL OF MINUTES:** MEETING MINUTES FROM FEBRUARY 26, 2020 AND SPECIAL MEETING MINUTES FROM APRIL 3, 2020

**APPROVAL OF CASH TRANSACTIONS** – FEBRUARY 1, 2020 – MARCH 31, 2020

**NEW BUSINESS**

**RESOLUTIONS FOR APPROVAL**

12. **RESOLUTION 20D-40:** RESOLUTION ESTABLISHING THE UNFEASIBILITY OF IN-PERSON MEETINGS
13. **RESOLUTION 20D-25:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH 1 LLC RELATED TO THE REBUILD DULUTH PROGRAM
14. **RESOLUTION 20D-26:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH URBAN VENTURES LLC RELATED TO THE REBUILD DULUTH PROGRAM
15. **RESOLUTION 20D-27:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH CABIN COLLECTIVE LLC RELATED TO THE REBUILD DULUTH PROGRAM
16. **RESOLUTION 20D-28:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH NORTHERN AQ LLC RELATED TO THE REBUILD DULUTH PROGRAM
17. **RESOLUTION 20D-29:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH FORD HOME COMPANY RELATED TO THE REBUILD DULUTH PROGRAM
18. **RESOLUTION 20D-30:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH FORD HOME COMPANY RELATED TO THE REBUILD DULUTH PROGRAM

19. **RESOLUTION 20D-31:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH PROGRAM
20. **RESOLUTION 20D-32:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH PROGRAM
21. **RESOLUTION 20D-33:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH PEYSER LLC RELATED TO THE REBUILD DULUTH PROGRAM
22. **RESOLUTION 20D-34:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH SIMPLY TINY DEVELOPMENT LLC RELATED TO THE REBUILD DULUTH PROGRAM
23. **RESOLUTION 20D-35:** RESOLUTION APPROVING THE ISSUANCE AND SALE OF HEALTH FACILITIES REVENUE BONDS, SERIES 2020D (ESSENTIA HEALTH OBLIGATED GROUP)
24. **RESOLUTION 20D-36:** RESOLUTION AUTHORIZING A CONTAMINATION CLEANUP GRANT APPLICATION IN AN AMOUNT NOT EXCEED \$134,946 TO THE MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT RELATING TO PROPERTY LOCATED AT 2102 WEST SUPERIOR STREET AND COMMITTING A DEVELOPER MATCH OF NOT LESS THAN TWENTY-FIVE PERCENT OF THE AWARDED AMOUNT.
25. **RESOLUTION 20D-37:** RESOLUTION AMENDING RESOLUTION 20D-21 MODIFYING AUTHORIZATION FOR A FIFTH AMENDMENT TO THE LEASE AGREEMENT WITH AAR AIRCRAFT SERVICES, INC. TO ABATE RENT FOR THE MRO FOR THE MONTHS OF MAY, JUNE AND JULY, 2020.
26. **RESOLUTION 20D-38:** RESOLUTION AUTHORIZING A SECOND AMENDMENT TO THE NOTE WITH PIER B HOLDING LLC
27. **RESOLUTION 20D-39:** RESOLUTION AUTHORIZING A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH NORTHSTAR DEVELOPMENT INTERESTS, LLC RELATED TO THE VOYAGEUR LAKEWALK INN REDEVELOPMENT
28. **RESOLUTION 20D-41:** RESOLUTION RESCINDING RESOLUTION 20D-24 AND AUTHORIZING AN AGREEMENT WITH THE NORTHEAST ENTREPRENEUR FUND, INC. TO IMPLEMENT THE DULUTH SMALL BUSINESS EMERGENCY FUND IN THE AMOUNT OF \$443,000

**29. RESOLUTION 20D-42: RESOLUTION AUTHORIZING A GRANT AGREEMENT WITH THE ENTREPRENEUR FUND, INC. TO IMPLEMENT A COVID-19 EMERGENCY LOAN PROGRAM IN THE AMOUNT OF \$125,000**

**DISCUSSION**

**1. DIRECTOR'S REPORT**

Please take notice that the Duluth Economic Development Authority will hold a public hearing by telephone or other electronic means pursuant to Minnesota Statutes Section 13D.021 on Wednesday, April 22, 2020, at 5:15 p.m. All persons interested may monitor and participate in the hearing by visiting: <http://dulutheda.org/live-meeting> promptly at 5:15 p.m. on Wednesday, April 22, 2020, and written comments may be submitted to DEDA in advance of the meeting via the DEDA's web site at <http://dulutheda.org/contact-us/> or via email at [cfleege@duluthmn.gov](mailto:cfleege@duluthmn.gov), and DEDA will decide if the conveyance is advisable.

The regular meeting place of DEDA is the Duluth City Council Chambers at City Hall, 411 West First Street, in Duluth, Minnesota. At this time board members of DEDA do not intend to attend the meeting in person; due to continually evolving restrictions and guidance from state and federal officials and agencies, the board members of DEDA will attend the meeting remotely via telephone or other electronic means pursuant to Minnesota Statutes Section 13D.021.

## RESOLUTION 20D-25

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH 1 LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 1 LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to 1 LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with 1 LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to 1 LLC:

Westerly half (W'y ½) of Lot Four (4), Block Three (3), BRYANT ADDITION TO DULUTH FIRST DIVISION, St. Louis County, Minnesota (the “Property”).

3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to 1 LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize

the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Lincoln Park neighborhood depicted on the attachment to this resolution to 1 LLC as part of the Rebuild Duluth Program.



## RESOLUTION 20D-26

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH URBAN VENTURES LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 Urban Ventures LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Urban Ventures LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Urban Ventures LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Urban Ventures LLC:
- Lots Eleven (11) and Twelve (12), Block Six (6), HOMEWOOD ADDITION TO DULUTH, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Urban Ventures LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize

the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Kenwood neighborhood depicted on the attachment to this resolution to Urban Ventures LLC as part of the Rebuild Duluth Program.

## RESOLUTION 20D-27

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH CABIN COLLECTIVE LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 Cabin Collective LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Cabin Collective LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Cabin Collective LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Cabin Collective LLC:  
  
North 31 Ft. (N 31') of South Sixty Ft. (S 60') of Lots One (1), Two (2), Three (3), Four (4) and Four and One-half (4 ½), Block One Hundred Eighty-nine (189), WEST DULUTH SEVENTH DIVISION, St. Louis County, Minnesota (the “Property”).
  3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Cabin Collective LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Spirit Valley neighborhood depicted on the attachment to this resolution to Cabin Collective LLC as part of the Rebuild Duluth Program.

## RESOLUTION 20D-28

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH NORTHERN AQ LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 Northern AQ LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Northern AQ LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Northern AQ LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Northern AQ LLC:
- Lot Twenty-three (23), East Fourth Street, DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Northern AQ LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant

lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Central Hillside neighborhood depicted on the attachment to this resolution to Northern AQ LLC as part of the Rebuild Duluth Program.

## RESOLUTION 20D-29

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH FORD HOME COMPANY RELATED TO THE REBUILD DULUTH PROGRAM

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 Ford Home Company 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Ford Home Company conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Ford Home Company for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Ford Home Company:  
  
Lots One (1) and Two (2), Block Twenty-three (23), NEW DULUTH FIRST DIVISION, St. Louis County, Minnesota (the “Property”).
  3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Ford Home Company.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the New Gary neighborhood depicted on the attachment to this resolution to Ford Home Company as part of the Rebuild Duluth Program.

## RESOLUTION 20D-30

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH FORD HOME COMPANY RELATED TO THE REBUILD DULUTH PROGRAM

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 Ford Home Company 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Ford Home Company conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Ford Home Company for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Ford Home Company:  
  
Lots Three (3) and Four (4), Block Twenty-three (23), NEW DULUTH FIRST DIVISION, St. Louis County, Minnesota (the “Property”).
  3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Ford Home Company.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the New Gary neighborhood depicted on the attachment to this resolution to Ford Home Company as part of the Rebuild Duluth Program.

**RESOLUTION 20D-31**

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH  
HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH  
PROGRAM**

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 Hughes Olsen Workshop LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Hughes Olsen Workshop LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Hughes Olsen Workshop LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Hughes Olsen Workshop LLC:
- Lot One (1), Block Seventy-three (73), WEST DULUTH SECOND DIVISION, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Hughes Olsen Workshop LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Irving neighborhood depicted on the attachment to this resolution to Hughes Olsen Workshop LLC as part of the Rebuild Duluth Program.

**RESOLUTION 20D-32**

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH  
HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH  
PROGRAM**

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 Hughes Olsen Workshop LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Hughes Olsen Workshop LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Hughes Olsen Workshop LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Hughes Olsen Workshop LLC:
- Lot Five (5), Block Four (4), MACFARLANES GRASSY POINT ADD TO DULUTH, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Hughes Olsen Workshop LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Fairmount neighborhood depicted on the attachment to this resolution to Hughes Olsen Workshop LLC as part of the Rebuild Duluth Program.

## RESOLUTION 20D-33

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH PEYSER LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 Peyser LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Peyser LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Peyser LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Peyser LLC:

Lot Two (2), Block Fourteen (14), LESTER PARK 2<sup>ND</sup> DIVISION, St. Louis County, Minnesota (the “Property”).

3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Peyser LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize

the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Lakeside neighborhood depicted on the attachment to this resolution to Peyser LLC as part of the Rebuild Duluth Program.

**RESOLUTION 20D-34**

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH  
SIMPLY TINY DEVELOPMENT LLC RELATED TO THE REBUILD DULUTH  
PROGRAM**

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 Simply Tiny Development, LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Simply Tiny Development, LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Simply Tiny Development, LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Simply Tiny Development, LLC:
- N 30 FT OF S 75 FT OF LOTS 1 AND 2, BLOCK 14, NORTONS DIVISION OF DULUTH, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Simply Tiny Development, LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Hillside neighborhood depicted on the attachment to this resolution to Simply Tiny Development, LLC as part of the Rebuild Duluth Program.

## RESOLUTION NO. 20D-35

### RESOLUTION APPROVING THE ISSUANCE AND SALE OF HEALTH FACILITIES REVENUE BONDS, SERIES 2020D (ESSENTIA HEALTH OBLIGATED GROUP)

BE IT RESOLVED, by the Board of Commissioners of the Duluth Economic Development Authority, as follows:

- Section 1. Definitions. The terms used in this Resolution (1) have the meanings assigned below or (2) the meanings assigned to them in the Bond Indenture or the Loan Agreement, unless the context, use, or the rules of grammar indicate another or differing meaning or intent:
- a. Act: Minnesota Statutes, Sections 469.152 through 469.165, as amended.
  - b. Assignment: the integral assignment to the Obligated Group Note to be endorsed by DEDA in favor of the Bond Trustee.
  - c. Authorized Officers: the President and Secretary of DEDA, or the deputy or acting designee of either of them.
  - d. Board: the Board of Commissioners of DEDA, DEDA's governing body.
  - e. Bond Counsel: the law firm of Fryberger, Buchanan, Smith & Frederick, P.A.
  - f. Bond Indenture: the Bond Trust Indenture to be entered into between DEDA and the Bond Trustee.
  - g. Bond Trustee: U.S. Bank National Association, a national banking association with an office located in St. Paul, Minnesota, its successors and assigns.
  - h. Bonds: Health Facilities Revenue Bonds, Series 2020D (Essentia Health Obligated Group), as further described below.
  - i. Borrower: Essentia Health, the corporate offices of which are located at 502 East Second Street, in the City.
  - j. Borrower Documents: the Loan Agreement, the Master Indenture, the Supplemental Master Indenture, the Continuing Covenant Agreement and the Obligated Group Note.
  - k. City: the City of Duluth, Minnesota.
  - l. Code: the Internal Revenue Code of 1986, as amended.

- m. Continuing Covenant Agreement: the Continuing Covenant Agreement to be executed by the Borrower and the Purchaser.
- n. DEDA: the Duluth Economic Development Authority.
- o. DEDA Documents: collectively, the DEED Application, the Loan Agreement, the Bond Indenture and the Assignment.
- p. DEED: the Minnesota Department of Employment and Economic Development.
- q. DEED Application: the application submitted to DEED on behalf of DEDA, requesting approval of the proposal for the Project and the issuance of the Bonds.
- r. Documents: the DEDA Documents, the Borrower Documents, and other documents required for the issuance of the Bonds.
- s. Executive Director: the Executive Director of DEDA.
- t. Financing Purposes: financing the Project and paying costs of issuance of the Bonds.
- u. Host Cities: together the Cities of Cloquet, Park Rapids and Pine River, Minnesota.
- v. Loan Agreement: the Loan Agreement to be entered into between DEDA and the Borrower.
- w. Master Indenture: the Second Amended and Restated Master Trust Indenture dated as of November 1, 2018, as amended, between the Borrower, as Obligated Group Agent on behalf of itself and the other members of the Obligated Group, and the Master Trustee.
- x. Master Trustee: U.S. Bank National Association, as master trustee under the Master Indenture.
- y. Medical Campus: the area described as follows in the City: starting at the west side of Third Avenue East from its intersection with the south side of the alley above Superior Street, north to the north side of Fourth Street; then east to the intersection of the west side of Fourth Avenue East, then north to the north side of the alley above Fourth Street; then east to the east side of Fifth Avenue East; then south to the intersection of the east side of Fifth Avenue East and the north side of the alley above Third Street; then east along the north side of the alley to the east side of Sixth Avenue East, then south to the north side of Second Street; then east approximately ½ block; then south to the north side of First Street; then east approximately ½ block to the east side of Seventh Avenue East, then south along the east side of

Seventh Avenue East to Superior Street; then west along Superior Street to the east side of Fourth Avenue East; then north along the east side of Fourth Avenue East to the south side of the alley above Superior Street; then west to the west side of Third Avenue East at its intersection with the alley above Superior Street.

- z. Municipal Advisor: Raymond James & Associates, Inc., municipal advisor to the Borrower.
- aa. Obligated Group: a group composed of the Borrower and 13 of its affiliates, each of which has agreed in writing to be bound by the provisions of the Master Indenture.
- bb. Obligated Group Agent: Essentia Health, as obligated group agent under the Master Indenture.
- cc. Obligated Group Note: the promissory note of the Obligated Group, issued by the Borrower, as Obligated Group Agent, under the Master Indenture to DEDA.
- dd. Project: constructing, renovating, remodeling, expanding, rehabilitating, acquiring and equipping certain health facilities owned by the Borrower and one or more its affiliates, including (i) constructing and equipping an approximately 17,200-square foot, one-story outpatient clinic building to be located at 280 Barclay Ave. W., Pine River, MN (not to exceed \$6,500,000), (ii) renovating and equipping approximately 88,000-square feet of space within the Miller Hill Mall, 1600 Miller Trunk Hwy., Building C, Duluth, MN, to house a fitness and therapy center (not to exceed \$25,000,000), (iii) constructing and equipping an approximately 7,800-square foot, one-story outpatient clinic building to be located at 1413 Hwy. 33 S., Cloquet, MN (not to exceed \$4,400,000), (iv) remodeling an existing approximately 102,000 square-foot structure located at 1600 Miller Trunk Hwy., Duluth, MN, at which ambulatory surgical services, outpatient clinical services and/or support services will be provided (not to exceed \$50,000,000), (v) constructing and equipping an approximately 24,000-square foot, one-story outpatient clinic building to be located at 1103 First St. E., Park Rapids, MN (not to exceed \$8,000,000) and (vi) routine capital expenditures located and to be located within the Borrower's Medical Campus (not to exceed \$10,000,000).
- ee. Purchaser: Bank of America, N.A.
- ff. Qualified Services and Activities: health care facilities and services or revenue-producing facilities and services of organizations described in Section 501(c)(3) of the Code.
- gg. Registrar: bond registrar, paying agent, authenticating agent and transfer agent for the Bonds.

- hh. Special Tax Counsel: the law firm of Chapman and Cutler, LLP.
- ii. State: the State of Minnesota.
- jj. Supplemental Master Indenture: Supplemental Indenture Number Three to the Master Indenture between the Obligated Group Agent, on behalf of itself and the Members of the Obligated Group, and the Master Trustee.
- kk. Tax Certificate: the certificate of the Borrower, in customary form prepared by Special Tax Counsel and approved as to form by Bond Counsel to demonstrate compliance with the conditions of the Code, which allow for interest on the Bonds to be excludable from the gross income of the owners of the Bonds for federal income tax purposes (including any other bonds making up a single issue for federal income tax purposes).

Section 2. Summary of the Documents. Bond Counsel has provided the following information relating to the Documents:

- a. In the *Bond Indenture*, DEDA pledges and grants a security interest to the Bond Trustee in all of its right, title, and interest in the Obligated Group Note, the Loan Agreement (except for certain rights of DEDA to payment, indemnification and enforcement) and all moneys on deposit with the Bond Trustee under the Bond Indenture, for the benefit of the owners of the Bonds. The Bond Indenture sets forth the terms and conditions, covenants, rights, obligations, duties and agreements of the owners of the Bonds, DEDA and the Bond Trustee.
- b. In the *Loan Agreement*, DEDA loans the proceeds of the Bonds to the Borrower and the Borrower agrees to repay the loan in the amounts and at the times required to pay the principal of, premium, if any, and interest on the Bonds in full when due. In addition, the Loan Agreement contains provisions requiring the Borrower to pay the administrative and legal costs incurred by DEDA in connection with the Bonds (including post-issuance expenses, if any) and DEDA's administrative fee required by DEDA as a condition to issue the Bonds. In addition, the Borrower agrees and is obligated to indemnify, provide reports, and permit enforcement by DEDA of its rights under the Loan Agreement.
- c. The Borrower's payment obligations under the Loan Agreement are proposed to be secured by the *Obligated Group Note*, issued by the Obligated Group Agent under and according to the terms of the *Master Indenture* and payable and secured under the Master Indenture on the same basis as all other obligated group notes. The Obligated Group Note will be issued in a stated principal amount equal to the stated principal amount of the Bonds and will bear interest at the rate or rates payable from time to time on the Bonds. Each member of the Obligated Group is jointly and severally liable for payment of the Obligated Group Note. The Obligated

Group Note is initially payable to DEDA, and then assigned by DEDA to the Bond Trustee.

- d. The *Supplemental Master Indenture* is required under the Master Indenture to authorize issuance of the Obligated Group Note and to establish the terms of the Obligated Group Note.
- e. As required by the Code, DEDA will execute an endorsement to the *Tax Certificate*, in customary form prepared by Special Tax Counsel and approved as to form by Bond Counsel to demonstrate compliance with the conditions required for interest on the Bonds to be excludable from the gross income of the owners of the Bonds for federal income tax purposes.

Section 3. Reliance. The Board has relied without independent investigation on written representations and opinions of the Borrower, its consultants and Bond Counsel that the Project qualifies as a “project” as defined in Section 469.153, subdivision 2(d) of the Act.

Section 4. Recitals Regarding Proceedings. The Board makes the following recitals of fact:

- a. A notice of public hearing was published in the *Duluth News Tribune*, DEDA’s official newspaper and a newspaper of general circulation, calling a public hearing on the proposed issuance of the Bonds and the proposal of the Borrower to undertake and finance the Project.
- b. DEDA held a public hearing by telephone and other electronic means on the Project and the financing thereof on April 22, 2020, and all persons in attendance wishing to speak on the proposed issuance of the Bonds and the proposal of the Borrower to undertake and finance the Project, if any, were given an opportunity to do so.
- c. Drafts of the forms of the DEDA Documents have been made available to this Board and are on file in the office of the Executive Director.

Section 5. Recitals Regarding the Borrower and the Project. The Board makes the following recitals of fact:

- a. Bond Counsel has advised DEDA that:
  - i. the purpose of the Act, as found and determined by the legislature, is to promote the welfare of the State by the active promotion, attraction, encouragement and development of economically sound industry and commerce through governmental action to prevent, so far as possible, the emergence of blighted and marginal lands and areas of chronic unemployment;

- ii. under the Act, DEDA is authorized and empowered to issue revenue obligations such as the Bonds for the Financing Purposes.
- b. Factors necessitating the active promotion and development of economically sound industry and commerce are the increasing concentration of population in the metropolitan areas and the rapidly rising increase in the amount and cost of governmental services required to meet the needs of the increased population and the need for development of land uses which will provide an adequate tax base to finance these increased costs and access to employment opportunities for the area population.
- c. DEDA has been advised by representatives of the Borrower that: (i) it is a Minnesota nonprofit corporation; (ii) that it and each other member of the Obligated Group is an organization described in Section 501(c)(3) of the Code; (iii) it and its affiliates benefitted by the Bonds are each engaged in Qualified Services and Activities; (iv) conventional financing to pay the capital cost of the Project is available only on a limited basis and at such high costs of borrowing that the economic feasibility of its operations would be significantly reduced; (v) on the basis of information submitted to the Borrower and its discussions with representatives of area financial institutions and potential buyers of tax-exempt bonds, the Bonds could be issued and sold upon favorable rates and terms to finance the Project; (vi) the Project would not be undertaken in its present form but for the availability of financing under the Act; and (vii) no public official of DEDA has either a direct or indirect financial interest in the Project nor will any public official either directly or indirectly benefit financially from the Project.
- d. The Borrower has agreed to pay any and all costs incurred by DEDA in connection with the issuance of the Bonds, whether or not the issuance is carried to completion.

Section 6. Findings. The Board finds, determines and declares as follows:

- a. The welfare of the State requires the provision of necessary health care facilities so that adequate health care services are available to residents of the State at reasonable cost.
- b. DEDA desires to facilitate the selective development of the State, retain and improve the tax base and help provide the range of services and employment opportunities required by the population. The Project will assist DEDA in achieving those objectives; help to stabilize market valuation of the City; help maintain a positive relationship between assessed valuation and debt; and enhance the image and reputation of the State.
- c. On the basis of information made available to DEDA by the Borrower, it appears, and DEDA finds, that: (i) the Project constitutes properties, used or useful in connection with a revenue producing enterprise providing health

care services; (ii) the Project furthers the purposes stated in the Act; (iii) the Project would not be undertaken but for the availability of financing under the Act and the willingness of DEDA to furnish financing; and (iv) the effect of the Project, if undertaken, will be to: (A) encourage the development of economically sound industry and commerce, (B) assist in the prevention of the emergence of blighted and marginal land, (C) help prevent chronic unemployment, (D) provide the range of service and employment opportunities required by the population, (E) help prevent the movement of talented and educated persons out of the State where their services may not be as effectively used, (F) promote more intensive development and appropriate use of land within the State, eventually to increase the tax base of the State; and (G) provide adequate health care services to residents of the State at a reasonable cost.

Section 7. Approval of the Project and the Bonds.

- a. The Project is approved. Issuance of the Bonds is approved and authorized.
- b. In order to finance the Financing Purposes, DEDA, based on representations of the Borrower, accepts the offer of the Purchaser to purchase the Bonds in an original aggregate principal amount of not to exceed \$70,000,000, at an initial annual interest rate approved by the Borrower, subject to adjustment as provided in the Bond Indenture and the Bonds, and upon the terms and conditions specified in this Resolution, the Bond Indenture and the Bonds. The Bonds shall contain a recital that they are issued pursuant to the Act as conclusive evidence of their validity and of the regularity of their issuance. The Bonds will bear the designation set forth in the definition of "Bonds."
- c. The Bonds must be in substantially the form attached to the Bond Indenture, with appropriate variations, omissions and insertions permitted or required by this Resolution, and as may be necessary and appropriate and approved by Bond Counsel and the Borrower. The Bonds are incorporated by reference.
- d. The Authorized Officers are authorized and directed to execute, acknowledge and deliver the Bonds. The seal of DEDA may be omitted as allowed by law. The execution of the Bonds by the Authorized Officers is conclusive evidence of approval of the Bonds in accordance with the terms of this Resolution.

Section 8. Approval and Execution of Documents and Certificates.

- a. The DEDA Documents and the Bonds are made a part of this Resolution and are approved in substantially the forms on file with DEDA. The Authorized Officers are authorized and directed to execute and deliver the DEDA Documents and the endorsement to the Tax Certificate with

changes, insertions and omissions approved by Bond Counsel. The Authorized Officers are authorized and directed to execute, acknowledge and deliver the DEDA Documents and the Bonds on behalf of DEDA with such changes, insertions and omissions therein as DEDA's attorney or Bond Counsel may hereafter approve. The seal of DEDA may be omitted as allowed by law.

- b. The Authorized Officers and other officers and members of DEDA (individually or with one or more other officers and members of DEDA) are authorized and directed to (i) execute and deliver all other documents which may be required under the terms of the DEDA Documents or the Bonds or by Bond Counsel; (ii) take any other action required or deemed appropriate on the advice of Bond Counsel for the performance of DEDA's duties necessary to carry out the purposes of the Bonds and the DEDA Documents; and (iii) furnish certified copies of this Resolution, all proceedings and records of DEDA relating to the Bonds, and any other affidavits and certificates required, in the opinion of Bond Counsel, to show the facts relating to DEDA respecting the Bonds, as the facts appear from the books and records in DEDA's custody and control or as otherwise known to them.
- c. The execution by the Authorized Officers of the DEDA Documents is conclusive evidence of their approval in accordance with the terms of this Resolution.
- d. The Borrower Documents are accepted in substantially the forms on file with DEDA.

Section 9. Absent or Disabled Officers. If any of the Authorized Officers or any other officer, employee or agent of DEDA authorized to execute certificates, instruments, or other written documents on behalf of DEDA:

- a. ceases to be an officer, employee or agent of DEDA after he or she has executed any certificate, instrument or other written document, the validity or enforceability of the certificate, instrument or other written document signed by them is not affected; or
- b. is unavailable to execute certificates, instruments or other written documents, the certificates, instruments or other written documents may be executed by a deputy or assistant to the unavailable officer, or any other officer of DEDA who is, in the opinion of Bond Counsel, authorized to sign the certificates, instruments or other written documents, with full force and effect.

Section 10. Future Amendments.

- a. After the adoption of this Resolution, but prior to the issuance and delivery of the Bonds to the Purchaser, the original aggregate principal amount of

the Bonds, the maturity date of the Bonds, the principal amount of the Bonds due on each payment date, the interest rate of the Bonds prior to the first Mandatory Tender Date (as defined in the Bond Indenture), the date of the documents referenced in this Resolution and the Bonds, and the terms of redemption of the Bonds may be established or modified by the Borrower with the approval of the Authorized Officers; provided that the aggregate principal amount of the Bonds may not be increased from the amounts set forth in this Resolution.

- b. The authority to approve, execute and deliver, on behalf of DEDA, future amendments to the Loan Agreement are delegated to the Authorized Officers, subject to the conditions established in the Bond Indenture and Loan Agreement; provided that the Board must approve any changes which, in the opinion of Bond Counsel affect the Unassigned Rights, as defined in the Bond Indenture.
- c. The authorization given above is an authorization for the execution and delivery of any certificates and related items required to demonstrate compliance with the agreements being amended and the terms of this Resolution. The execution of any instrument by one or more of the Authorized Officers is conclusive evidence of the approval in accordance with the terms of this Resolution.

Section 11. Registered Form. The Bonds must be issued only in fully registered form, numbered and in such denominations as provided in the Bond Indenture.

Section 12. Bond Trustee; Bond Registrar; Paying Agent. DEDA appoints the Bond Trustee as trustee, registrar and paying agent for the Bonds.

Section 13. Limitations.

- a. *Limitation on Payment and Nature of Security.* The revenues and proceeds derived from the DEDA Documents are specifically pledged to the payment of the principal of and interest on the Bonds in the manner and to the extent specified in this Resolution, the Bonds and the Documents; and nothing in this Resolution, the Bonds and the Documents assigns, pledges or otherwise encumbers any other funds or assets of DEDA. The Bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of DEDA, except the portion of the Project mortgaged or otherwise encumbered under the provisions and for the purposes of the Act. Notwithstanding anything contained in the Resolution, the Bonds or the Documents or any other document referred to in the Resolution, the Bonds or the Documents to the contrary, under the provisions of the Act, the Bonds may not be payable from nor charged upon any funds other than the revenue pledged to its payment under the DEDA Documents. No holder of the Bonds will ever have the right to compel any exercise of the taxing power of DEDA to pay the Bonds or the interest thereon, or to enforce payment of

the Bonds against any property of DEDA except the portion of the Project mortgaged or otherwise encumbered under the provisions and for the purpose of the Act. The Bonds are not a debt of DEDA within the meaning of any constitutional or statutory limitation. However, nothing impairs the rights of the holder of the Bonds to enforce covenants made for the security of the Bonds as provided in Section 469.163 of the Act.

- b. *Limitation of Liability.* DEDA is not subject to any liability on the Bonds. No agreement, covenant or obligation contained in this Resolution or in the Documents is an agreement, covenant or obligation of any member of the Board, or of any officer, employee or agent of DEDA in that person's individual capacity. Neither the members of the Board, nor any officer executing the Bonds or the Documents, is liable personally on the Bonds or subject to any personal liability or accountability by reason of the issuance of the Bonds or execution of the Documents.
- c. *Limitation on Rights Conferred.* Nothing in this Resolution or in the Documents will or is intended to be construed to confer upon any person (other than as provided in the Bonds, the DEDA Documents, and the other agreements, instruments and documents by approved in this Resolution) any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision of this Resolution.

Section 14. Offering and Disclosure Materials. DEDA has not participated in the preparation of any offering materials relating to the Bonds and has made no independent investigation with respect to any matters which may be disclosed in such offering materials.

Section 15. DEED Approval; Conditions Precedent.

- a. The Authorized Officers are authorized and directed to work with Bond Counsel to facilitate submission of the DEED Application to DEED, and other officers, employees and agents of DEDA are authorized to provide DEED with any information it requires. Bond Counsel is authorized and directed to submit the DEED Application to DEED requesting approval.
- b. Notwithstanding anything in this Resolution to the contrary, delivery of the Bonds is subject to and contingent upon the following:
  - i. the Project and the issuance of the Bonds are approved by DEED;
  - ii. the Project and the issuance of the Bonds are approved by the Mayor of the City, in a separate writing;
  - iii. each of the Host Cities has consented to the issuance by DEDA of the Bonds financing the portion of the Project located in its jurisdiction; and

- iv. the Borrower has agreed in writing to pay DEDA its administrative fee in the amount equal to 0.25% of the final stated principal amount of the Bonds.

Section 14. Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

Section 15. Effective Date. This resolution shall take effect immediately.

Approved by the Duluth Economic Development Authority this 22<sup>nd</sup> day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: This resolution authorizes the issuance of tax-exempt bonds by DEDA (the "Bonds") to finance improvements to health care facilities owned and operated by Essentia Health or one or more of its affiliates located in Duluth and the Cities of Cloquet, Park Rapids and Pine River, Minnesota.

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# Duluth Economic Development Authority

## February and March, 2020 Cash Activity - all DEDA Funds

ACCUMULATED TRANSACTION LISTING, G/L Date Range 02/01/20 - 03/31/20 (as of 4/14/2020)

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
<b><u>FUND 860 - OPERATING FUND</u></b>			<b>Beginning Balance</b>	<b>\$ 2,608,132.98</b>	<b>TB</b>
02/01/20	2020-00000359	GL	Cost Allocation - DEDA	(33,333.33)	Cost Allocation - DEDA
02/03/20	2020-00000836	AP	Moline Machinery LLC	(62,500.00)	C19-860-908 Sanitary Sewer Repair Reimbursement
02/03/20	2020-00000836	AP	Wenck Associates, Inc	(7,162.77)	19-860-936 Consultant Services Pastoret & Robeson
02/03/20	2020-00000836	AP	West Duluth Business Club	(100.00)	Annual Membership WDBC 2020
02/03/20	2020-00000836	AP	ACCT, Inc.	(65,500.00)	Pastoret ACM Abatement & Regulated Waste Removal
02/03/20	2020-00000836	AP	Duluth Public Utilities - Comfort Systems	(822.15)	335 W Superior St 11/28/19-12/31/19
02/03/20	2020-00000909	RA	Cirrus Design Corporation	902.00	Invoice #2019-00000367; 2019-00000368 and 2020-
02/04/20	2020-00000947	RA	PayGrpOreillyLLC	437.09	Deda Lease Payment rent
02/06/20	2020-00001065	RA	Roers Investments, LLC	1,690.00	Invoice #2019-00000348
02/10/20	2020-00001076	AP	Northern Business Products	(20.89)	Office Supplies - Acct 162
02/10/20	2020-00001076	AP	Northern Business Products	(204.62)	Office Supplies - Acct 162
02/10/20	2020-00001076	AP	Nancy R. Aronson-Norr	(35.00)	DEDA Meeting 12/18/19
02/10/20	2020-00001076	AP	Zack Filipovich	(35.00)	DEDA Meeting 12/18/19
02/10/20	2020-00001076	AP	Noah Hobbs	(35.00)	DEDA Meeting 12/18/19
02/10/20	2020-00001076	AP	Timothy P McShane	(35.00)	DEDA Meeting 12/18/19
02/10/20	2020-00001076	AP	Barbara Russ	(35.00)	DEDA Meeting 12/18/19
02/14/20	2020-00001293	GL	Reimburse City Contingent Account - Checks #37401 - 37434	(9.90)	contingent account-reimburse misc. small expenses
02/18/20	2020-00001272	AP	Duluth Public Utilities - Comfort Systems	(822.15)	335 W Superior 1/1/20-1/30/20
02/18/20	2020-00001272	AP	Nancy R. Aronson-Norr	(35.00)	DEDA Meeting 1/22/2020
02/18/20	2020-00001272	AP	Matthew T Cartier	(35.00)	DEDA Meeting 1/22/2020
02/18/20	2020-00001272	AP	Zack Filipovich	(35.00)	DEDA Meeting 1/22/2020
02/18/20	2020-00001272	AP	Rozalind Randorf	(35.00)	DEDA Meeting 1/22/2020
02/18/20	2020-00001272	AP	Timothy P McShane	(35.00)	DEDA Meeting 1/22/2020
02/18/20	2020-00001272	AP	Barbara Russ	(35.00)	DEDA Meeting 1/22/2020
02/18/20	2020-00001272	AP	Lori Davey	(609.69)	DEDA Travel 2/5/20-2/7/20
02/18/20	2020-00001357	RA	Essentia	292,387.50	IBD Fees for 2020C Debt Issuance
02/20/20	2020-00001474	RA	Interstate Parking Services	(14,737.78)	Parking Ramps
02/24/20	2020-00001547	RA	Three D I, LLC	15,245.00	Invoice #2019-00000366; #2019-00000365; #2019-
02/25/20	2020-00001571	GL	P-Cards, January 2020	(630.00)	Misc purchases for supplies, etc.
02/29/20	2020-00001739	GL	Investment Earnings for February	3,688.00	Investment Earnings for February
03/01/20	2020-00000359	GL	Cost Allocation - DEDA	(33,333.33)	Cost Allocation - DEDA
03/02/20	2020-00001664	AP	Duluth News Tribune	(10.80)	Public Hearing Ad 2/11/20
03/02/20	2020-00001664	AP	Duluth News Tribune	(12.00)	Public Hearing Ad 2/13/20
03/02/20	2020-00001664	AP	Duluth News Tribune	(11.60)	Public Hearing Ad 2/13/20
03/02/20	2020-00001664	AP	Jason Hale	(565.39)	Ehlers Finance Travel 2/6-2/7/20
03/02/20	2020-00001664	AP	LHB Engineers & Architects	(3,557.50)	Pastoret Terrace TIF Analysis
03/02/20	2020-00001664	AP	Northspan Group Inc	(1,917.50)	C19-860-933 Mayors Affordable Housing Task Force
03/02/20	2020-00001664	AP	St Louis County Recorder	(138.00)	File DEDA/GARY
03/03/20	2020-00001794	RA	Titanium Partners LLC	5,000.00	LSC Flats Transactions; DEDA Resolution 19D-29

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description	
03/03/20	2020-00001794	RA	Vikingland Lawn Care LLC	1,000.00	Application Fee for Sale of Atlas Parcels; DEDA	
03/03/20	2020-00001794	RA	PayGrpOreillyLLC	437.09	DEDA Lease Payments	
03/10/20	2020-00001986	RA	Court Administrator	5,164.31	State of Minnesota vs DEDA, City of Duluth (Cozy Bar)	
03/16/20	2020-00002075	AP	Duluth Public Utilities - Comfort Systems	(822.15)	335 W Superior St 1/31/20-2/28/20	
03/16/20	2020-00002075	AP	ACCT, Inc.	(7,000.00)	Pastoret ACM Abatement & Regulated Waste Removal	
03/16/20	2020-00002075	AP	ACCT, Inc.	(7,500.00)	Pastoret ACM Abatement & Regulated Waste Removal	
03/16/20	2020-00002075	AP	Nancy R. Aronson-Norr	(35.00)	DEDA Meeting 2/26/2020	
03/16/20	2020-00002075	AP	Robert E Asleson	(915.70)	Ehlers Finance Seminar 2/5-2/7/20	
03/16/20	2020-00002075	AP	Matthew T Cartier	(35.00)	DEDA Meeting 2/26/20	
03/16/20	2020-00002075	AP	Fryberger Buchanan Smith & Frederick	(3,170.00)	Parking Ramp Conveyance - thru 5/31/19	
03/16/20	2020-00002075	AP	Fryberger Buchanan Smith & Frederick	(217.00)	Parking Ramp Conveyance - thru 6/30/19	
03/16/20	2020-00002075	AP	Fryberger Buchanan Smith & Frederick	(217.00)	Parking Ramp Conveyance - thru 7/31/19	
03/16/20	2020-00002075	AP	Fryberger Buchanan Smith & Frederick	(248.00)	Parking Ramp Conveyance - thru 8/31/19	
03/16/20	2020-00002075	AP	Fryberger Buchanan Smith & Frederick	(77.50)	Parking Ramp Conveyance - thru 9/30/19	
03/16/20	2020-00002075	AP	Fryberger Buchanan Smith & Frederick	(201.50)	Parking Ramp Conveyance - thru 10/31/19	
03/16/20	2020-00002075	AP	Timothy P McShane	(35.00)	DEDA Meeting 2/26/20	
03/16/20	2020-00002075	AP	Northspan Group Inc	(2,322.50)	C19-860-933 Mayors Affordable Housing Task Force	
03/16/20	2020-00002075	AP	Rozalind Randorf	(35.00)	DEDA Meeting 2/26/20	
03/16/20	2020-00002075	AP	Barbara Russ	(35.00)	DEDA Meeting 2/26/20	
03/16/20	2020-00002075	AP	St Louis County Recorder	(230.00)	Recording Fees - HRA Property Conveyance	
03/16/20	2020-00002075	AP	St Louis County Recorder	(46.00)	Recording Fee - Decker Dwellings	
03/16/20	2020-00002075	AP	St Louis County Auditor	(4,336.85)	2019 TIF Maintenance Charge	
03/17/20	2020-00002165	RA	Interstate Parking Services LLC	(4,702.15)	Parking Ramp Revenue	
03/17/20	2020-00002186	GL	P-Cards, February 2020	(549.93)	Misc purchases for supplies	
03/30/20	2020-00002402	AP	Northspan Group Inc	(1,745.00)	C19-860-933 Mayors Affordable Housing Task Force	
03/30/20	2020-00002402	AP	SAS Associates	(1,666.25)	19 860 926 Downtown Waterfront Public Investment Plan	
03/30/20	2020-00002402	AP	Century Fence Co	(6,688.00)	Pastoret Fence Urgent Repair	
03/30/20	2020-00002402	AP	Wenck Associates, Inc	(628.20)	19-860-936 Consultant Services Pastoret & Robeson	
03/30/20	2020-00002402	AP	Vieau Associates	(4,570.00)	Phase II Investigation 424 S Lake St	
03/30/20	2020-00002402	AP	Newman Sign Co	(39.39)	Pastoret Fence sign	
03/31/20	2020-00002536	GL	Investment Earnings for March	4,124.00	Investment Earnings for March	
<b>FUND 860 - OPERATING FUND</b>				<b>Ending Balance - 3-31-20</b>	<b>2,663,755.45</b>	<b>TB</b>
<b>FUND 861 - DEBT SERVICE</b>				<b>Beginning Balance</b>	<b>836,308.42</b>	<b>TB</b>
02/18/20	2020-00001272	AP	NorShor Theatre LLC	(37,032.67)	Final 2019 TIF Settlement	
02/18/20	2020-00001272	AP	A & L Duluth Renaissance LLC	(1,836.93)	Final 2019 TIF Settlement	
02/18/20	2020-00001329	GL	Clear Due To/From's	(23,701.02)	JE to pay funds owed	
02/29/20	2020-00001739	GL	Investment Earnings for February	1,168.00	Investment Earnings for February	
03/16/20	2020-00002075	AP	St Louis County Auditor	(6,991.30)	2019 TIF Maintenance Charge	
03/31/20	2020-00002536	GL	Investment Earnings for March	1,182.00	Investment Earnings for March	
<b>FUND 861 - DEBT SERVICE</b>				<b>Ending Balance - 3-31-20</b>	<b>769,096.50</b>	<b>TB</b>
<b>FUND 865 - CAPITAL PROJECTS</b>				<b>Beginning Balance</b>	<b>2,566,186.72</b>	<b>TB</b>
02/29/20	2020-00001739	GL	Investment Earnings for February	3,685.00	Investment Earnings for February	
03/31/20	2020-00002536	GL	Investment Earnings for March	3,937.00	Investment Earnings for March	
<b>FUND 865 - CAPITAL PROJECTS</b>				<b>Ending Balance - 3-31-20</b>	<b>2,573,808.72</b>	<b>TB</b>

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
<b><u>FUND 866 - MRO FACILITY</u></b>			<b><i>Beginning Balance</i></b>	<b>739,909.70</b>	<b>TB</b>
02/01/20	2020-00000334	MB	AAR Aircraft Services, Inc	35,780.54	Building Rent MRO Facility - February 2020
02/03/20	2020-00000836	AP	Jamar Company	(5,472.86)	19-860-936 Consultant Services Pastoret & Robeson Ballroom Demo
02/04/20	2020-00000947	RA	AAR Aircraft Services, Inc	36,510.76	Invoice #2020-00000033
02/10/20	2020-00001076	AP	Jamar Company	(11,484.75)	MRO Facility east wall Phase II to include ext siding and window
02/25/20	2020-00001574	RA	AAR Aircraft Services, Inc	7,791.30	Invoice #2020-00000034
02/29/20	2020-00001739	GL	Investment Earnings for February	1,140.00	Investment Earnings for February
03/01/20	2020-00000897	MB	AAR Aircraft Services, Inc	730.22	March 2020 - Building Rent/MRO Facility
03/13/20	2020-00002107	RA	AAR Aircraft Services, Inc	37,240.98	Invoice #2020-00000057
03/30/20	2020-00002402	AP	Northspan Group Inc	(6,210.00)	Contract 19-860-934 AAR Corp Candidate Attraction
03/31/20	2020-00002536	GL	Investment Earnings for March	1,269.00	Investment Earnings for March
<b><u>FUND 866 - MRO FACILITY</u></b>			<b><i>Ending Balance - 3-31-20</i></b>	<b>837,204.89</b>	<b>TB</b>
<b><u>FUND 867 - STOREFRONT LOANS</u></b>			<b><i>Beginning Balance</i></b>	<b>178,700.33</b>	<b>TB</b>
02/12/20	2020-00001223	RA	City of Duluth Sec Code	658.27	February Ren. Loan Payments Women in Const
02/20/20	2020-00001474	RA	Alerus Financial	1,037.10	Deda Loan Old City Hall LLP
02/28/20	2020-00001712	RA	Duluth Playhouse Incorporated	25,000.00	10/1/19 and 1/1/20 loan payments
02/28/20	2020-00001712	RA	Duluth Playhouse Incorporated	25,000.00	10/1/19 and 1/1/20 loan payment
02/29/20	2020-00001739	GL	Investment Earnings for February	259.00	Investment Earnings for February
03/18/20	2020-00002219	RA	Alerus Financial	1,037.10	Old City Hall Loan Payment
03/31/20	2020-00002536	GL	Investment Earnings for March	354.00	Investment Earnings for March
<b><u>FUND 867 - STOREFRONT LOANS</u></b>			<b><i>Ending Balance - 3-31-20</i></b>	<b>232,045.80</b>	<b>TB</b>

## RESOLUTION 20D-40

### RESOLUTION ESTABLISHING THE UNFEASIBILITY OF IN-PERSON MEETINGS

**WHEREAS**, on March 13, 2020, Minnesota Governor Tim Walz issued Executive Order 20-01, "Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19," declaring a peacetime emergency under Minn. Stat. § 12.31, subd. 2;

**WHEREAS**, the Center for Disease Control has labeled COVID-19 as a pandemic illness;

**WHEREAS**, COVID-19 poses a risk to the health, welfare, and safety of the public;

**WHEREAS**, the Minnesota Department of Health has issued guidelines and recommendations to slow the spread of COVID-19 that include limiting social interaction;

**WHEREAS**, Minn. Stat. § 13D.021 permits open meetings to be conducted through telephone or other electronic means if:

1. The presiding officer for the governing body finds it not practical or prudent to meet in person because of a health pandemic or an emergency declared under Minn. Stat. Ch. 12;
2. All members of the body participating in the meeting, wherever their physical location, can hear one another and hear all testimony and discussion;
3. Members of the public present at the regular meeting location can hear all discussion, testimony, and votes of the public body, unless attendance at the meeting is not feasible due to health pandemic or emergency declaration;
4. At least one member of the body, chief legal counsel, or chief administrative officer is present at the regular meeting location, unless unfeasible due to health pandemic or emergency declaration; and
5. All votes of the body are conducted by roll call so each member's vote can be identified and recorded; and

**WHEREAS**, the Executive Director of DEDA, as chief administrative officer, by determination dated April 14, 2020 has declared that in-person DEDA meetings are not practical or prudent because of the COVID-19 health pandemic, and that DEDA meetings shall be held by telephone or other electronic means pursuant to Minnesota Statute, section 13D.021.

**NOW, THEREFORE, BE IT RESOLVED BY DEDA AS FOLLOWS:**

1. Due to the COVID-19 health pandemic and public health emergency, it is not feasible to have at least one member of DEDA or other appropriate staff physically present at the regular meeting location during meetings held by electronic means.
2. All DEDA meetings governed by Minnesota Statutes, Chapter 13D, will be conducted through telephone or other electronic means without members of the public or City officials present at the regular physical location so long as a health pandemic exists or an emergency is declared under Minnesota Statutes, Chapter 12.
3. DEDA staff is directed, to the extent practical, to provide means for the public to monitor DEDA meetings held by telephone or other electronic means from a remote location.
4. DEDA staff is directed to provide notice of all DEDA meetings held by telephone or other electronic means in a manner consistent with state law.

Approved by the Duluth Economic Development Authority this 22<sup>nd</sup> day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to establish the unfeasibility of in-person meetings.

DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
DETERMINATION UNDER MINNESOTA STATUTES,  
SECTION 13D.01 AS TO IN-PERSON MEETINGS

The Executive Director for the Duluth Economic Development Authority, as chief administrative officer, has determined that in-person meetings are not practical or prudent because of the continuing health risks posed by the health pandemic resulting from COVID-19 and the peacetime emergency declared by the Governor of Minnesota on March 13, 2020, under Executive Order 20-01 and on March 25, 2020, under Emergency Executive Order 20-20. Until further notice or until such time as the State of Minnesota determines to no longer be in a state of emergency, all meetings of the Duluth Economic Development Authority governed by Minnesota Statutes, Section 13D shall be conducted by telephone or other electronic means pursuant to Minnesota Statutes, Section 13D.021

Dated: April 14, 2020

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

By Christopher E. Fleege  
Executive Director

## RESOLUTION 20D-25

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH 1 LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 1 LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to 1 LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with 1 LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to 1 LLC:

Westerly half (W'y ½) of Lot Four (4), Block Three (3), BRYANT ADDITION TO DULUTH FIRST DIVISION, St. Louis County, Minnesota (the “Property”).

3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to 1 LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

---

Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize

the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Lincoln Park neighborhood depicted on the attachment to this resolution to 1 LLC as part of the Rebuild Duluth Program.



## Exhibit A

### REBUILD DULUTH LAND SALE AGREEMENT 1 LLC

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and 1 LLC, a Minnesota Limited Liability Company, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$102,900.00 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: Westerly half of Lot Four, Block Three, Bryant Addition to Duluth First Division, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall

restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and

Specifications”). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the “Total Project Cost”). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer’s option may (i) terminate this Agreement or (ii) may pay the amount of \$2,300 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the “Closing”) shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City’s Construction Services and Inspections Division, ii) concurrent with the closing on Buyer’s construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the “Closing Date”). Closing on the Property and on Buyer’s construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or

before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	1 LLC 4413 Venture Avenue Duluth, Minnesota 55811 Attn: Alan Nelson
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24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any

claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the





EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans (“Plans and Elevations”) dated \_\_\_\_\_ and submitted to the City of Duluth (“City”) by \_\_\_\_\_ [insert Buyer’s name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_  
(Name of project)

Located at: \_\_\_\_\_  
(Street address)

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

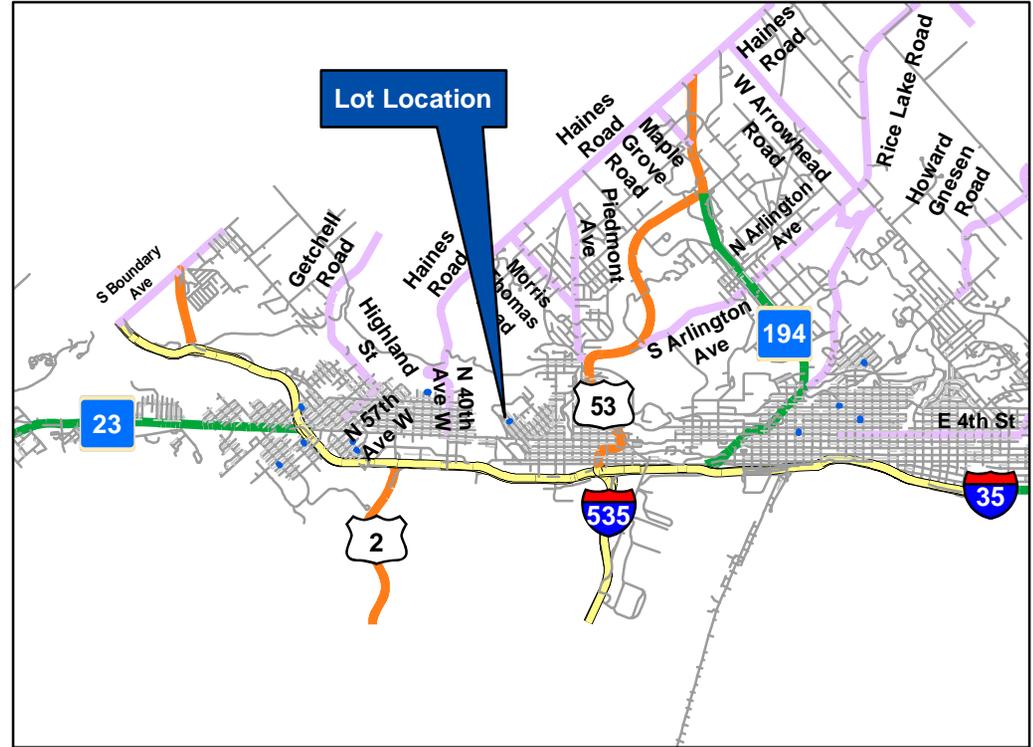
Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DATA PRACTICES NOTICE:**

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

# Site 13



**Parcel ID(s): 010-0330-00230**

**Neighborhood: Lincoln Park**

**Dimensions: 25x100**

**Zoning: R-1**

**Legal Description: BRYANT ADDITION TO DULUTH 1ST DIVISION, WLY 1/2; BLOCK 003 LOT 04**

**Additional notes:**



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

### Legend

-  Vacant Lot
- Contours 1 Ft (Scale < 5000)**
- Index**
-  Intermediate
-  Index

## RESOLUTION 20D-26

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH URBAN VENTURES LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 Urban Ventures LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Urban Ventures LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Urban Ventures LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Urban Ventures LLC:
- Lots Eleven (11) and Twelve (12), Block Six (6), HOMEWOOD ADDITION TO DULUTH, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Urban Ventures LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

---

Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize

the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Kenwood neighborhood depicted on the attachment to this resolution to Urban Ventures LLC as part of the Rebuild Duluth Program.

## Exhibit A

### REBUILD DULUTH LAND SALE AGREEMENT URBAN VENTURES LLC

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and URBAN VENTURES LLC, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$670,000 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: Lot 11 and 12 Block 006, HOMEWOOD ADDITION TO DULUTH, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall restore the Property to its present condition prior to the end of the Inspection Period.

The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and Specifications"). The Plans and Specifications shall be subject to the written approval of

the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the "Total Project Cost"). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer's option may (i) terminate this Agreement or (ii) may pay the amount of \$32,500 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the "Closing") shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City's Construction Services and Inspections Division, ii) concurrent with the closing on Buyer's construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the "Closing Date"). Closing on the Property and on Buyer's construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon

request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	Gary Johnson 370 Woodlawn Ave Saint Paul, MN 55105
-----------------------	--

24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the



URBAN VENTURES LLC

By \_\_\_\_\_:

Gary Johnson

Its Owner

STATE OF MINNESOTA )

) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:

Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
Duluth, Minnesota 55802

EXHIBIT A  
**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans (“Plans and Elevations”) dated \_\_\_\_\_ and submitted to the City of Duluth (“City”) by \_\_\_\_\_ [insert Buyer’s name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_  
(Name of project)

Located at: \_\_\_\_\_  
(Street address)

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DATA PRACTICES NOTICE:**

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

# Site 12



**Parcel ID(s): 010-2270-02200**

**Neighborhood: Kenwood**

**Dimensions: 60x120**

**Zoning: R-1**

**Legal Description: HOMEWOOD ADDITION TO DULUTH; BLOCK 006 LOTS 11 AND 12**

**Additional notes:**



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

### Legend

- Vacant Lot
- Contours 1 Ft (Scale < 5000)
- Index
- Intermediate
- Index

## RESOLUTION 20D-27

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH CABIN COLLECTIVE LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 Cabin Collective LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Cabin Collective LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Cabin Collective LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Cabin Collective LLC:  
  
North 31 Ft. (N 31') of South Sixty Ft. (S 60') of Lots One (1), Two (2), Three (3), Four (4) and Four and One-half (4 ½), Block One Hundred Eighty-nine (189), WEST DULUTH SEVENTH DIVISION, St. Louis County, Minnesota (the “Property”).
  3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Cabin Collective LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

---

Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Spirit Valley neighborhood depicted on the attachment to this resolution to Cabin Collective LLC as part of the Rebuild Duluth Program.

Exhibit A

REBUILD DULUTH  
LAND SALE AGREEMENT  
CABIN COLLECTIVE LLC

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and Cabin Collective LLC, a Minnesota Limited Liability Company, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$241,591.25 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: North 31 feet of South Sixty feet of Lots One, Two, Three, Four and Four and one-half, Block 189, West Duluth, Seventh Division, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from

DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping

plans in a form acceptable to the Executive Director in his discretion (the "Plans and Specifications"). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the "Total Project Cost"). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer's option may (i) terminate this Agreement or (ii) may pay the amount of \$7,200 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the "Closing") shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City's Construction Services and Inspections Division, ii) concurrent with the closing on Buyer's construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the "Closing Date"). Closing on the Property and on Buyer's construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing

in the sole discretion of the Executive Director. If the Closing has not occurred on or before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without

first obtaining the written consent of DEDA if Buyer has completed construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for

any activity or use which Buyer may conduct; the compliance of the Property or the Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the

assignee shall explicitly assume the obligations of Buyer under this Agreement and Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	Cabin Collective 1525 Talmage Avenue Southeast, Apt. 2 Duluth, Minnesota 55414 Attn: Luke Nichols
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24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an

agreement or made any undertaking of any kind whatsoever as a result of which any claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement



CABIN COLLECTIVE LLC

By \_\_\_\_\_

Luke Nichols

Its Founding Member

STATE OF MINNESOTA )

) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:  
Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
Duluth, Minnesota 55802

EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans ("Plans and Elevations") dated \_\_\_\_\_ and submitted to the City of Duluth ("City") by \_\_\_\_\_ [insert Buyer's name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_  
(Name of project)

Located at: \_\_\_\_\_  
(Street address)

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DATA PRACTICES NOTICE:**

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

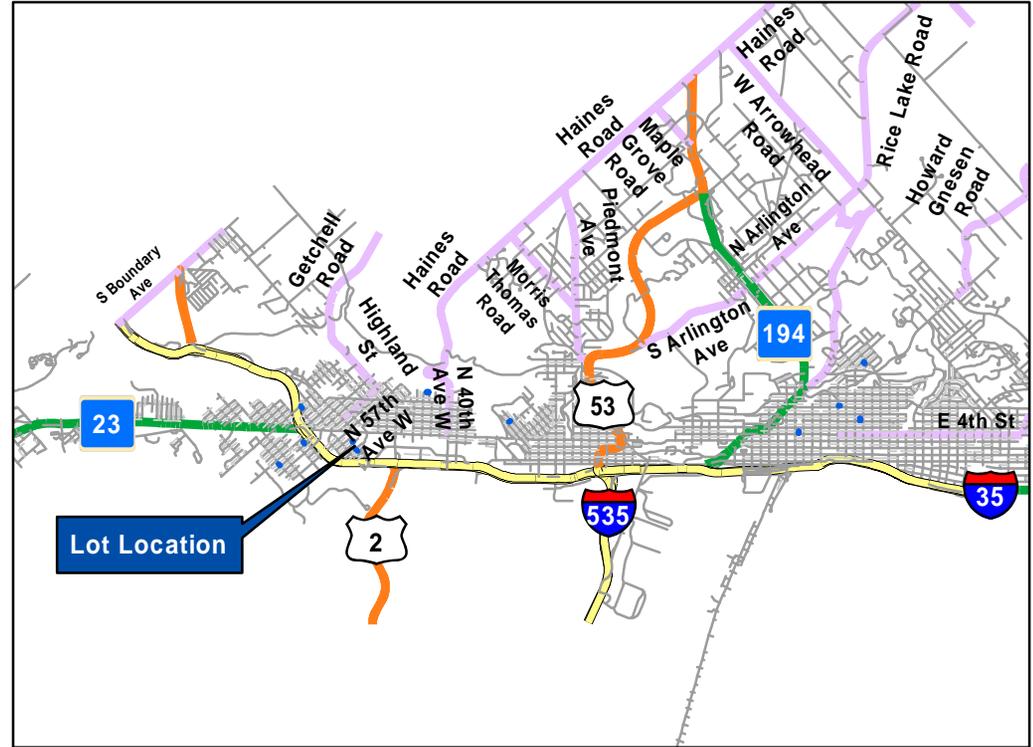
# Site 10



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

### Legend

- Vacant Lot
- Contours 1 Ft (Scale < 5000)
- Intermediate
- Index



**Parcel ID(s): 010-4530-03610**

**Neighborhood: Spirit Valley**

**Dimensions: 31x125**

**Zoning: R-P**

**Legal Description: WEST DULUTH 7TH DIVISION;  
BLOCK: 189 N 31 FT OF S 60 FT OF LOTS 1,2,3,4 AND 4 1/2**

**Additional notes:**

## RESOLUTION 20D-28

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH NORTHERN AQ LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 Northern AQ LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Northern AQ LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Northern AQ LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Northern AQ LLC:
- Lot Twenty-three (23), East Fourth Street, DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Northern AQ LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant

lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Central Hillside neighborhood depicted on the attachment to this resolution to Northern AQ LLC as part of the Rebuild Duluth Program.

Exhibit A

REBUILD DULUTH  
LAND SALE AGREEMENT  
NORTHERN AQ LLC

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and Northern AQ LLC, a Minnesota Limited Liability Corporation, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$668,000.00 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: Lot 23, Block 0000, Duluth Proper First Division East 4<sup>th</sup> Street, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall

restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and

Specifications”). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the “Total Project Cost”). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer’s option may (i) terminate this Agreement or (ii) may pay the amount of \$24,400 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the “Closing”) shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City’s Construction Services and Inspections Division, ii) concurrent with the closing on Buyer’s construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the “Closing Date”). Closing on the Property and on Buyer’s construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or

before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	Northern AQ LLC Attn: Caleb Korzenowski 1831 E 8 <sup>th</sup> St.- Suite 101 Duluth, Minnesota 55812
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24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any

claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the



NORTHERN AQ LLC

By \_\_\_\_\_

Caleb Korzenowski

Its Manager

STATE OF MINNESOTA )

) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:  
Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
Duluth, Minnesota 55802

EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans ("Plans and Elevations") dated \_\_\_\_\_ and submitted to the City of Duluth ("City") by \_\_\_\_\_ [insert Buyer's name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_  
(Name of project)

Located at: \_\_\_\_\_  
(Street address)

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

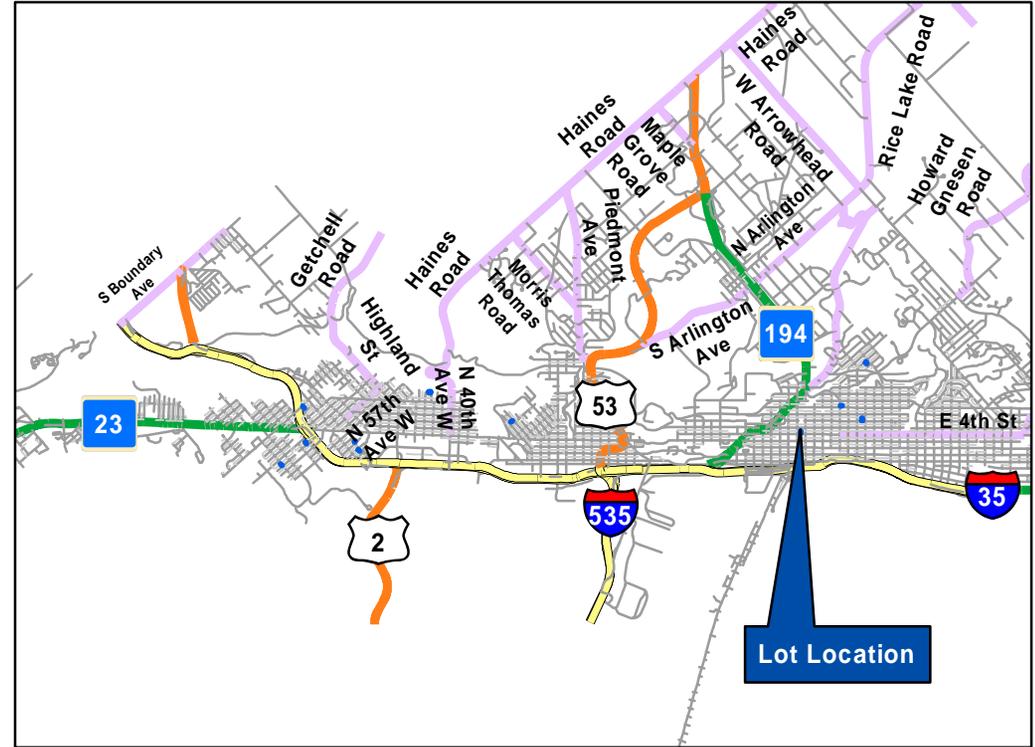
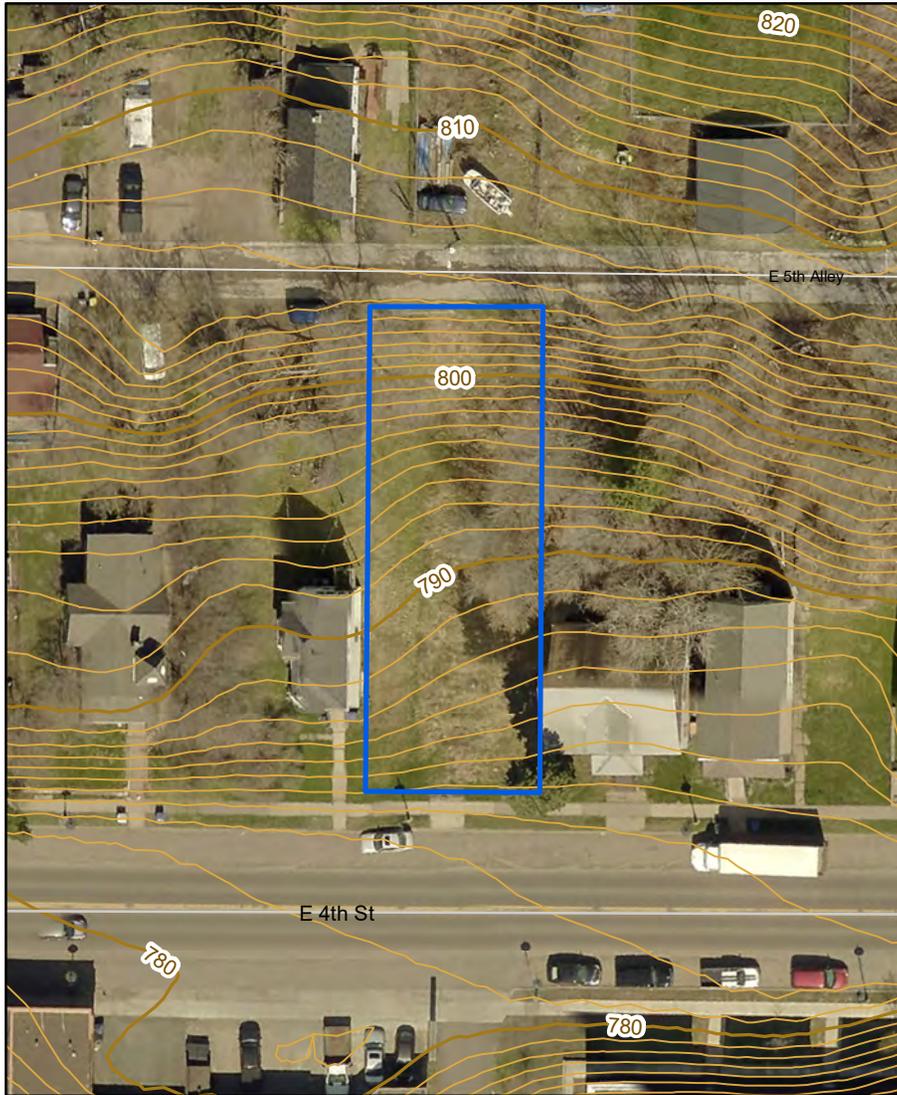
Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DATA PRACTICES NOTICE:**

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

# Site 11



**Parcel ID(s): 010-0990-00170**

**Neighborhood: Central Hillside**

**Dimensions: 25X140**

**Zoning: F-6**

**Legal Description: DULUTH PROPER 1ST DIVISION EAST 4TH STREET; BLOCK 0000 LOT 0023**

**Additional notes:**



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

### Legend

-  Vacant Lot
- Contours 1 Ft (Scale < 5000)**
- Index**
-  Intermediate
-  Index

## RESOLUTION 20D-29

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH FORD HOME COMPANY RELATED TO THE REBUILD DULUTH PROGRAM

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 Ford Home Company 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Ford Home Company conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Ford Home Company for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Ford Home Company:
- Lots One (1) and Two (2), Block Twenty-three (23), NEW DULUTH FIRST DIVISION, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Ford Home Company.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the New Gary neighborhood depicted on the attachment to this resolution to Ford Home Company as part of the Rebuild Duluth Program.

Exhibit A

REBUILD DULUTH  
LAND SALE AGREEMENT  
FORD HOME COMPANY

THIS LAND SALE AGREEMENT (this "Agreement") is made by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and Ford Home Company, a sole proprietorship, hereinafter referred to as "Buyer". Notwithstanding the date of signature of the Buyer, the effective date of this Agreement shall be the date of signature acknowledgment of the President and Secretary of DEDA (the "Effective Date").

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$694,440 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: Lot 001 & 0002, Block 023, New Duluth 1<sup>st</sup> Division, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall

restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and

Specifications”). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the “Total Project Cost”). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer’s option may (i) terminate this Agreement or (ii) may pay the amount of \$5,400 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the “Closing”) shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City’s Construction Services and Inspections Division, ii) concurrent with the closing on Buyer’s construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the “Closing Date”). Closing on the Property and on Buyer’s construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or

before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	Ford Home Company Attn: Mike Mense 529 West 152 <sup>nd</sup> Street- suite 1 New York City, NY 10031
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24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any

claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the



Ford Home Company

By \_\_\_\_\_

Michael Mense

Its Owner

STATE OF MINNESOTA )

) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:

Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
Duluth, Minnesota 55802

EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans ("Plans and Elevations") dated \_\_\_\_\_ and submitted to the City of Duluth ("City") by \_\_\_\_\_ [insert Buyer's name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_  
(Name of project)

Located at: \_\_\_\_\_  
(Street address)

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DATA PRACTICES NOTICE:**

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

# Site 7



**Parcel ID(s): 010-3430-07340 & 07350**

**Neighborhood: New Gary**

**Dimensions: 25x140 (each)**

**Zoning: MU-N**

**Legal Description: NEW DULUTH 1ST DIVISION; BLOCK: 023  
 LOT: 0001 & NEW DULUTH 1ST DIVISION; BLOCK: 023  
 LOT: 0002**

**Additional notes: The applicant is encouraged to provide a site/floor plan that corresponds with a 25ft lot. A fair amount of tree removal and infill is required.**



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

- Legend**
- Vacant Lot
  - Contours 1 Ft (Scale < 5000)
  - Index**
  - Intermediate
  - Index

## RESOLUTION 20D-30

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH FORD HOME COMPANY RELATED TO THE REBUILD DULUTH PROGRAM

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 Ford Home Company 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Ford Home Company conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Ford Home Company for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Ford Home Company:  
  
Lots Three (3) and Four (4), Block Twenty-three (23), NEW DULUTH FIRST DIVISION, St. Louis County, Minnesota (the “Property”).
  3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Ford Home Company.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the New Gary neighborhood depicted on the attachment to this resolution to Ford Home Company as part of the Rebuild Duluth Program.

Exhibit A

REBUILD DULUTH  
LAND SALE AGREEMENT  
FORD HOME COMPANY

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and Ford Home Company, a sole proprietorship, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$347,220 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: Lot 0003 AND 0004, Block 023, New Duluth 1<sup>st</sup> Division, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall

restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and

Specifications”). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the “Total Project Cost”). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer’s option may (i) terminate this Agreement or (ii) may pay the amount of \$5,000 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

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The closing on the Property (the “Closing”) shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City’s Construction Services and Inspections Division, ii) concurrent with the closing on Buyer’s construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the “Closing Date”). Closing on the Property and on Buyer’s construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or

before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

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On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	Ford Home Company Attn: Mike Mense 529 West 152 <sup>nd</sup> St.- Suite 1 New York City, NY 10031
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24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any

claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the



FORD HOME COMPANY

By \_\_\_\_\_

Michael Mense

Its Owner

STATE OF MINNESOTA )

) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:

Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
Duluth, Minnesota 55802

EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans (“Plans and Elevations”) dated \_\_\_\_\_ and submitted to the City of Duluth (“City”) by \_\_\_\_\_ [insert Buyer’s name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_  
(Name of project)

Located at: \_\_\_\_\_  
(Street address)

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

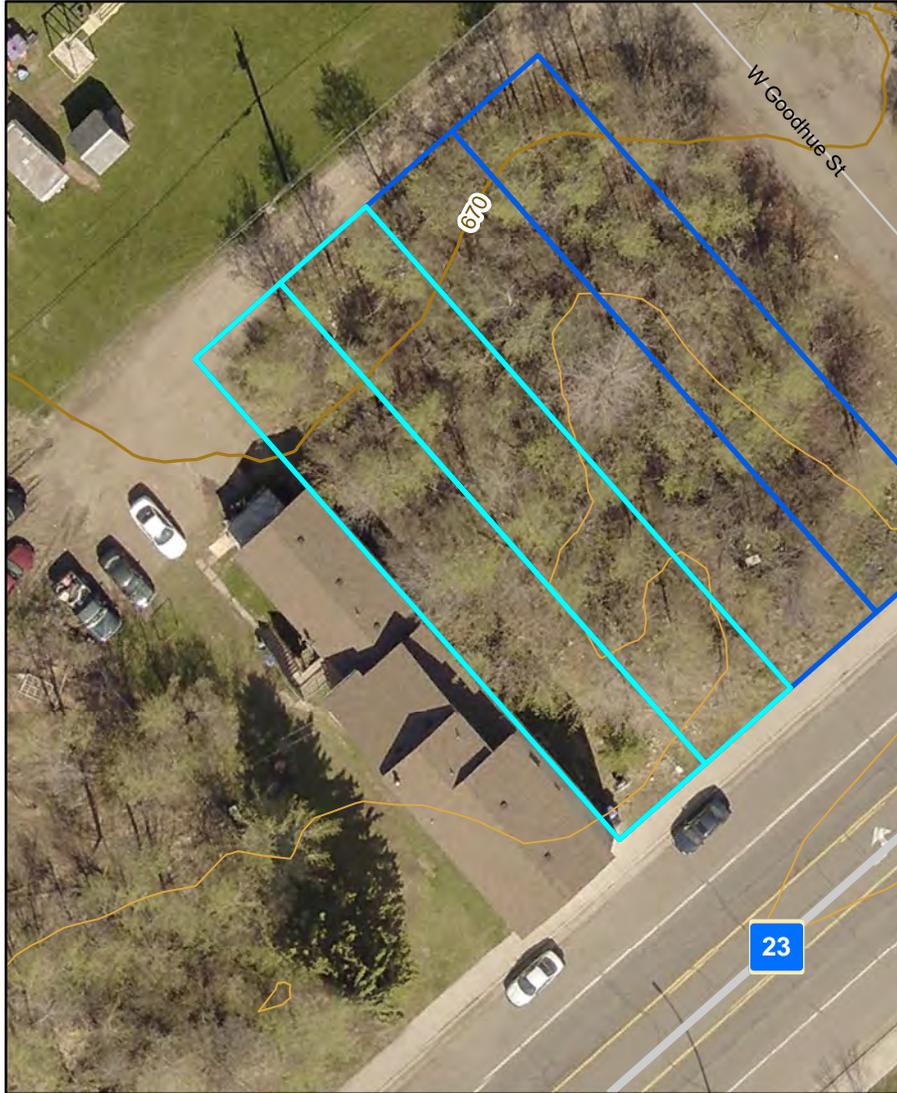
Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DATA PRACTICES NOTICE:**

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

# Site 8



**Parcel ID(s): 010-3430-07340 & 07350**

**Neighborhood: New Gary**

**Dimensions: 25x140 (each)**

**Zoning: MU-N**

**Legal Description: NEW DULUTH 1ST DIVISION; BLOCK: 023  
LOT: 0001 & NEW DULUTH 1ST DIVISION; BLOCK: 023  
LOT: 0002**

**Additional notes: The applicant is encouraged to provide a site/floor plan that corresponds with a 25ft lot. A fair amount of tree removal and infill is required.**



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

- Legend**
- Vacant Lot
  - Contours 1 Ft (Scale < 5000)
  - Index**
  - Intermediate
  - Index

**RESOLUTION 20D-31**

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH  
HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH  
PROGRAM**

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 Hughes Olsen Workshop LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Hughes Olsen Workshop LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Hughes Olsen Workshop LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Hughes Olsen Workshop LLC:
- Lot One (1), Block Seventy-three (73), WEST DULUTH SECOND DIVISION, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Hughes Olsen Workshop LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Irving neighborhood depicted on the attachment to this resolution to Hughes Olsen Workshop LLC as part of the Rebuild Duluth Program.

## Exhibit A

### REBUILD DULUTH LAND SALE AGREEMENT HUGHES OLSEN WORKSHOP LLC

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and Hughes Olsen Workshop LLC, a Minnesota Limited Liability Company, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$250,451,44 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: Lot 0001, Block 073, West Duluth Second Division, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall

restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and

Specifications”). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the “Total Project Cost”). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer’s option may (i) terminate this Agreement or (ii) may pay the amount of \$5,500 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the “Closing”) shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City’s Construction Services and Inspections Division, ii) concurrent with the closing on Buyer’s construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the “Closing Date”). Closing on the Property and on Buyer’s construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or

before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	Hughes Olsen Workshop C/O Benjamin Olsen 2369 Doswell Avenue St. Paul, Minnesota 55108
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24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any

claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the





EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans (“Plans and Elevations”) dated \_\_\_\_\_ and submitted to the City of Duluth (“City”) by \_\_\_\_\_ [insert Buyer’s name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_

Located at: \_\_\_\_\_

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

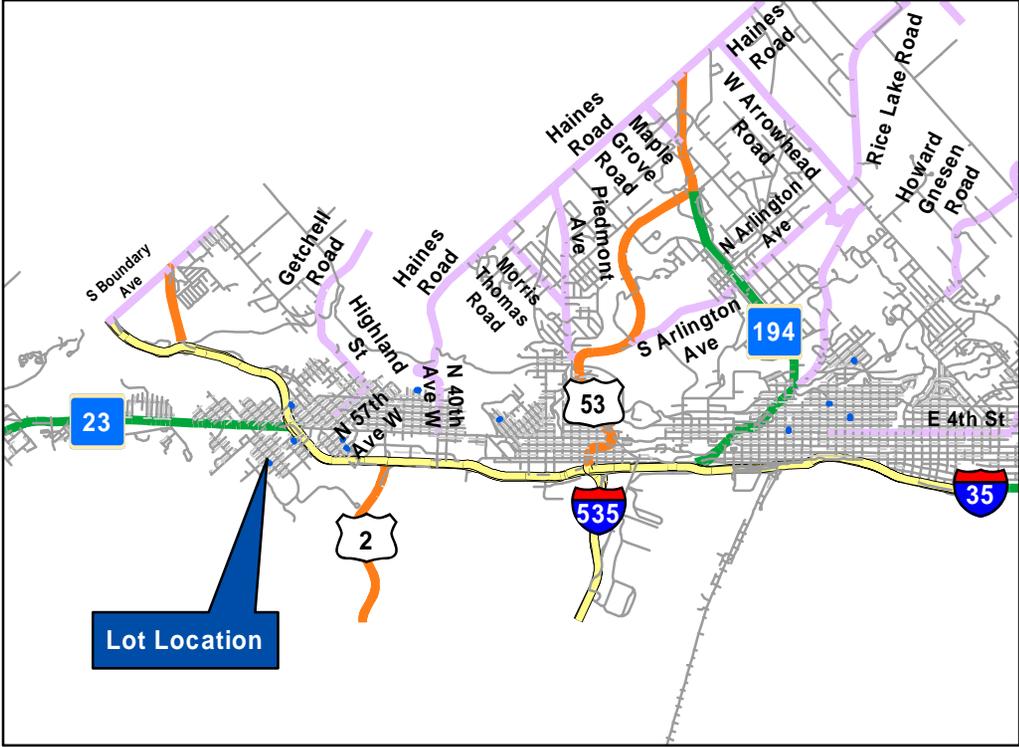
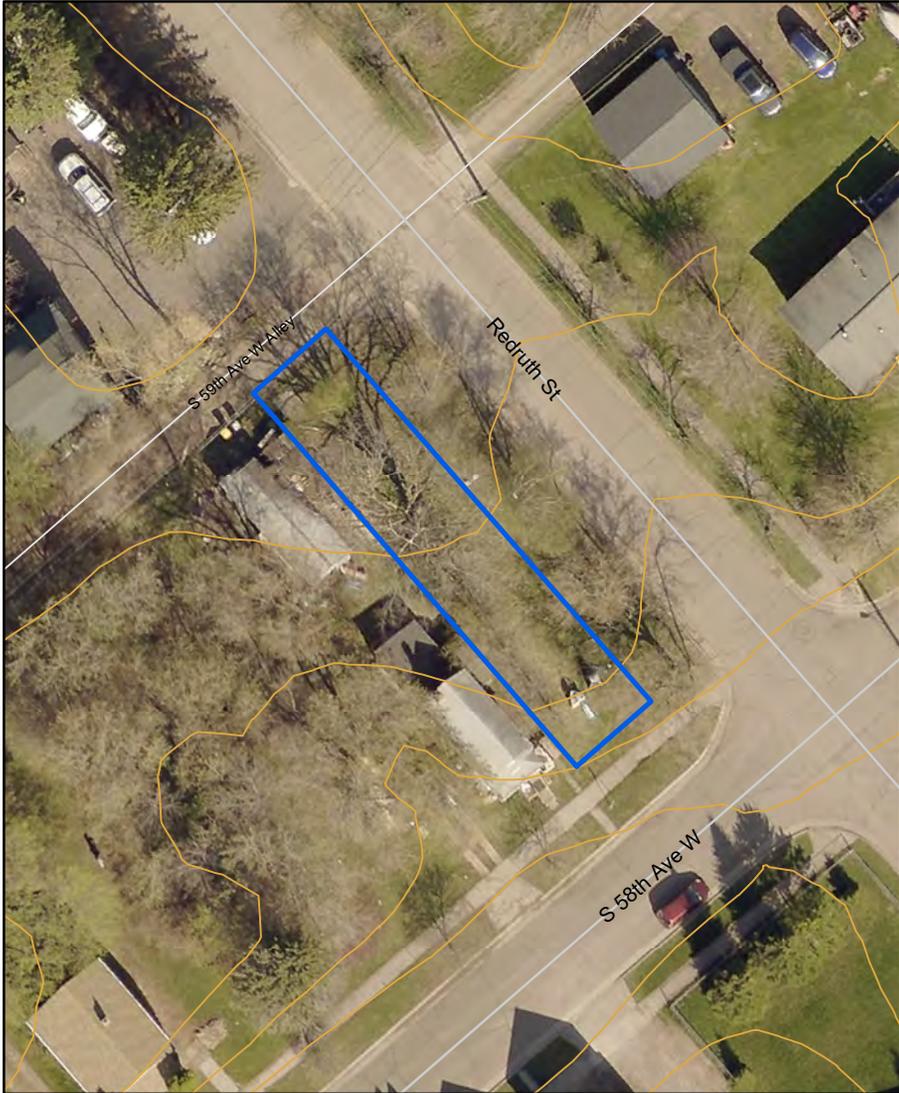
Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

*DATA PRACTICES NOTICE:*

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

# Site # 4



**Parcel ID(s): 010-4480-01910**

**Neighborhood: Irving**

**Dimensions: 25x125**

**Zoning: R-1**

**Legal Description: WEST DULUTH 2ND DIVISION;  
BLOCK: 073 LOT: 0001**

**Additional notes:**



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

**Legend**

-  Vacant Lot
- Contours 1 Ft (Scale < 5000)**
- Index\_**
-  Intermediate
-  Index

**RESOLUTION 20D-32**

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH  
HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH  
PROGRAM**

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 Hughes Olsen Workshop LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Hughes Olsen Workshop LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Hughes Olsen Workshop LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Hughes Olsen Workshop LLC:  
  
Lot Five (5), Block Four (4), MACFARLANES GRASSY POINT ADD TO DULUTH, St. Louis County, Minnesota (the “Property”).
  3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Hughes Olsen Workshop LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Fairmount neighborhood depicted on the attachment to this resolution to Hughes Olsen Workshop LLC as part of the Rebuild Duluth Program.

## Exhibit A

### REBUILD DULUTH LAND SALE AGREEMENT HUGHES OLSEN WORKSHOP LLC

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and Hughes Olsen Workshop LLC, a Minnesota Limited Liability Company, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$250,451.44 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: Lot 5, Block 4, MacFarlanes Grassy Point Addition to Duluth, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall

restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and

Specifications”). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the “Total Project Cost”). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer’s option may (i) terminate this Agreement or (ii) may pay the amount of \$5,300 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the “Closing”) shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City’s Construction Services and Inspections Division, ii) concurrent with the closing on Buyer’s construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the “Closing Date”). Closing on the Property and on Buyer’s construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or

before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	Hughes Olsen Workshop C/O Benjamin Olsen 2369 Doswell Avenue St. Paul, Minnesota 55108
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24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any

claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the



HUGHES OLSEN WORKSHOP LLC

By \_\_\_\_\_

Its \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the Co-Owner of Hughes Olsen Workshop, a Limited Liability Company, on behalf of the Company.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:  
Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
Duluth, Minnesota 55802

EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans (“Plans and Elevations”) dated \_\_\_\_\_ and submitted to the City of Duluth (“City”) by \_\_\_\_\_ [insert Buyer’s name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_  
(Name of project)  
Located at: \_\_\_\_\_  
(Street address)

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DATA PRACTICES NOTICE:**

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*



## RESOLUTION 20D-33

### RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH PEYSER LLC RELATED TO THE REBUILD DULUTH PROGRAM

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 Peyser LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Peyser LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Peyser LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Peyser LLC:

Lot Two (2), Block Fourteen (14), LESTER PARK 2<sup>ND</sup> DIVISION, St. Louis County, Minnesota (the “Property”).

3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Peyser LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize

the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Lakeside neighborhood depicted on the attachment to this resolution to Peyser LLC as part of the Rebuild Duluth Program.

Exhibit A

REBUILD DULUTH  
LAND SALE AGREEMENT  
PEYSER LLC

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and PEYSER LLC, a Minnesota Limited Liability Company, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of \$488,400 as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: Lot 0002, Block 014, Lester Park 2<sup>nd</sup> Division Duluth, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall

restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and

Specifications”). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the “Total Project Cost”). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer’s option may (i) terminate this Agreement or (ii) may pay the amount of \$8,600 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the “Closing”) shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City’s Construction Services and Inspections Division, ii) concurrent with the closing on Buyer’s construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the “Closing Date”). Closing on the Property and on Buyer’s construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or

before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

In the Case of DEDA:	Duluth Economic Development Authority 402 City Hall Duluth, Minnesota 55802 Attn: Executive Director
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In the Case of Buyer:	Peyser LLC 8640 Winsdale Street North Golden Valley, Minnesota 55427 Attn: Jay Isenberg
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24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any

claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the



Peyser LLC

By \_\_\_\_\_

Jay Isenberg

Its Principal

STATE OF MINNESOTA )

) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:

Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
Duluth, Minnesota 55802

EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans ("Plans and Elevations") dated \_\_\_\_\_ and submitted to the City of Duluth ("City") by \_\_\_\_\_ [insert Buyer's name or other appropriate individual or entity] in connection with:

Project: \_\_\_\_\_  
(Name of project)

Located at: \_\_\_\_\_  
(Street address)

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DATA PRACTICES NOTICE:**

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

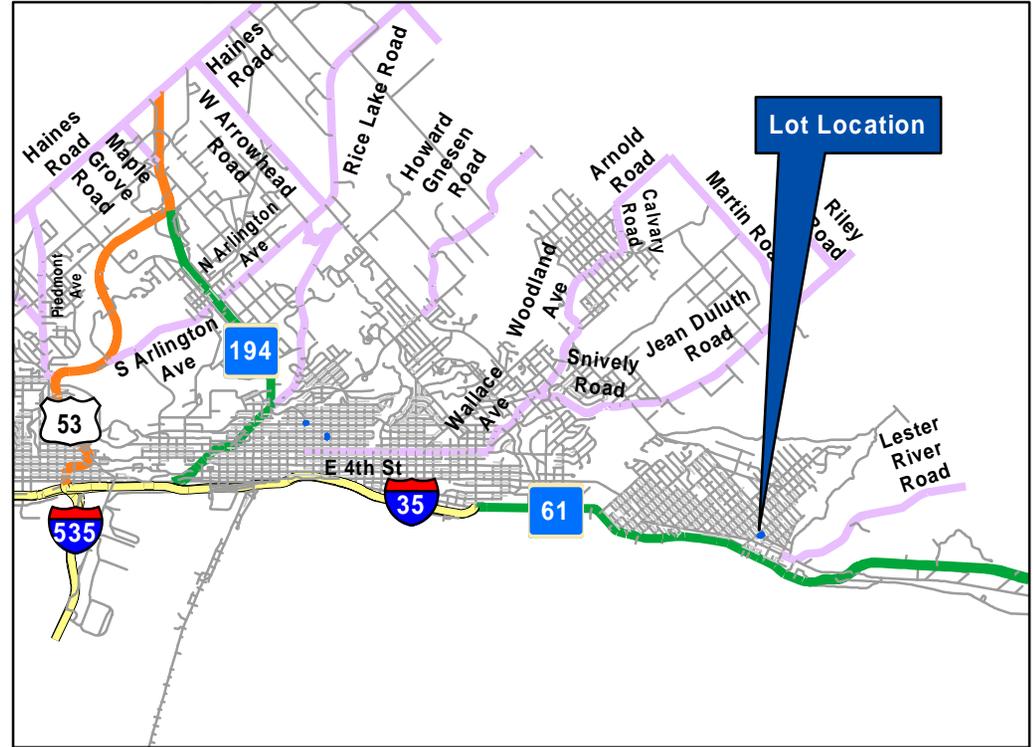
# Site 2



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

### Legend

- Vacant Lot
- Contours 1 Ft (Scale < 5000)
- Index\_
  - Intermediate
  - Index



**Parcel ID: 010-2840-01060**

**Neighborhood: Lakeside**

**Dimensions: 80x175**

**Zoning: R-1**

**Legal Description: LESTER PARK 2ND DIVISION DULUTH;  
BLOCK: 014 LOT: 0002**

**Additional notes:**

**RESOLUTION 20D-34**

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH  
SIMPLY TINY DEVELOPMENT LLC RELATED TO THE REBUILD DULUTH  
PROGRAM**

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 Simply Tiny Development, LLC 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 was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on April 22, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Simply Tiny Development, LLC conforms in all respects to the requirements of Minnesota Statutes 469.105.
2. That the proper DEDA officials are hereby authorized to execute the Rebuild Duluth Land Sale Agreement, substantially in the form of the copy attached hereto, with Simply Tiny Development, LLC for the sale of that property in St. Louis County, Minnesota, legally described below at no cost to Simply Tiny Development, LLC:
- N 30 FT OF S 75 FT OF LOTS 1 AND 2, BLOCK 14, NORTONS DIVISION OF DULUTH, St. Louis County, Minnesota (the “Property”).
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Simply Tiny Development, LLC.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

---

Executive Director

STATEMENT OF PURPOSE: The Rebuild Duluth Program is designed to incentivize the construction of innovatively designed, affordable housing units by providing vacant lots at no cost to qualified purchasers who have been selected through a formal application and selection process. The purpose of this resolution is to authorize the sale of certain property in the Hillside neighborhood depicted on the attachment to this resolution to Simply Tiny Development, LLC as part of the Rebuild Duluth Program.

REBUILD DULUTH  
LAND SALE AGREEMENT  
SIMPLY TINY DEVELOPMENT, LLC

THIS LAND SALE AGREEMENT (this "Agreement") is made as of the last date of signature acknowledgement below (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and a political subdivision under Minnesota Statutes Chapter 469, hereinafter referred to as "DEDA," and Simply Tiny Development, LLC, hereinafter referred to as "Buyer".

WHEREAS, DEDA has a program entitled "Rebuild Duluth", the materials of which are on file in the DEDA office, designed to incentivize the construction of innovatively designed, affordable housing units (each and if applicable, collectively, a "Housing Unit") by providing vacant lots at no cost to qualified purchasers who have been selected through an application process (the "Program"); and

WHEREAS, Buyer applied to acquire a vacant lot upon which to construct a Housing Unit pursuant to the Program for an estimated total construction cost of : \$168,429.46, as set forth in the Buyer's application on file in the DEDA office (the "Application"); and

WHEREAS, DEDA has determined that the conveyance of the Property (defined below) to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in this Agreement is in the best interests of the City of Duluth (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

Buyer shall not be required to pay any earnest money for the acquisition of the Property.

2. Use of the Property

The intended use for the Property is the construction of a Housing Unit pursuant to the Application and in accordance with the requirements of the Program and the Plans and Specifications (defined below) (the "Project").

3. Conveyance of Property

DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein and on the terms and conditions set forth herein, real property located in St. Louis County, Minnesota and legally described as follows: N 30 FT OF S 75 FT OF LOTS 1 AND 2, Block 014, NORTONS DIVISION OF DULUTH, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

4. Inspection Contingency

Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 45 days from the Effective Date (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property, and DEDA shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of DEDA's Executive Director or his designee (the "Executive Director"). The Executive Director will permit soil borings on the Property, but will not permit heavy equipment that would cause significant site disturbance. Under no circumstances may any excavation, construction or pre-construction activities occur on the Property prior to Closing.

Buyer understands that all Site Inspections done on the Property prior to Closing (defined below) shall be at the sole risk and expense of Buyer, and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from DEDA or any lien against the Property in relation to the Site Inspections. Buyer shall

restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement.

If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to DEDA before the expiration of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. Title Commitment

It is anticipated that within 50 days of the Effective Date, DEDA will order at DEDA's cost a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to DEDA within 10 days of receipt of the Title Commitment. At DEDA's election, DEDA may fix any title defects, or alternatively DEDA may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If DEDA fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to DEDA within 5 days of receiving notice that DEDA will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

6. Approval of Plans and Specifications

At least 30 days prior to the Closing Date, Buyer shall deliver to the Executive Director construction plans and specifications for the Project including landscaping plans in a form acceptable to the Executive Director in his discretion (the "Plans and

Specifications”). The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed substantial change in the Plans and Specifications after the initial approval by the Executive Director, the Plans and Specifications for said proposed change shall be likewise subject to the approval of the Executive Director. Substantial change does not include minor design or aesthetic change such as color scheme, window size or placement, building materials not identified in the application, and the like. Upon approval by the Executive Director of the final Plans and Specifications for the Project, Buyer shall provide a Non-Exclusive Right to Use to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost Estimate

At least thirty (30) days prior to the Closing Date (defined below), Buyer shall submit to DEDA in writing its final estimate of the total cost to construct the Housing Unit in form and detail acceptable to the Executive Director which shall include a copy of the construction contract (the “Total Project Cost”). In the event the Total Project Cost is 25% or more over the estimate of total construction costs contained in the Application, Buyer at Buyer’s option may (i) terminate this Agreement or (ii) may pay the amount of \$8,700 for the purchase of the Property. In the event the Buyer terminates this Agreement, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement, and except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

8. Closing

The closing on the Property (the “Closing”) shall occur i) after DEDA receives evidence from Buyer that a building permit has been approved by the City’s Construction Services and Inspections Division, ii) concurrent with the closing on Buyer’s construction financing for the Project, and iii) at a time mutually agreeable to the parties but in no event later than 120 days after the Effective Date (the “Closing Date”). Closing on the Property and on Buyer’s construction financing shall occur at the title company selected by DEDA. DEDA shall deliver possession of the Property on the Closing Date. Notwithstanding the above, the Closing Date may be extended in writing in the sole discretion of the Executive Director. If the Closing has not occurred on or

before the Closing Date, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of Land Sale Agreement evidencing the cancellation of this Agreement; and (iii) except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

9. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Buyer conveying DEDA's interest in the Property to Buyer. 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, if applicable; 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.

10. Deed Covenant

The deed conveying the Property shall incorporate, as a covenant running with the Property, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Property, 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 a cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by the City's Construction Services and Inspections Division (the "Certificate of Occupancy").

11. Recordation

Buyer agrees to pay all costs, including but not limited to recording fees and state deed tax, associated with the recording of this Agreement and the quitclaim deed in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable.

12. Project Contingencies

Buyer agrees to execute such documents as are necessary to allow DEDA staff and Buyer's lender to communicate and share documents in order to ensure that the Project can be built within the Program requirements and according to the Plans and Specification and for no more than 25% over the estimate of total construction costs set forth in the Application. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements when issued in order to evaluate whether the Project complies with Program requirements and the Plans and Specifications and will not cost more than 25% over the estimate of total construction costs set forth in the Application. If Buyer fails to provide the information required in this Section, or if the Executive Director determines in his discretion that Buyer cannot complete the Project as pursuant to the Program requirements or the Plans and Specifications and at a cost no more than 25% over the total construction costs set forth in the Application, this shall be a default as set forth in Section 19 for which the remedies set forth in said Section 19 shall apply.

13. Deadlines

Within one year from the Closing Date, Buyer shall have devoted the Property to its intended use by commencing construction on the Project in accordance with the approved Plans and Specifications as evidenced by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2021, Buyer shall have devoted the Property to its intended use by completing construction on the Project as evidenced by (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. Buyer shall provide the Executive Director evidence of (i) completion of construction of the Housing Unit in accordance with the requirements of the Program and the Plans and Specifications; and (ii) the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA. Buyer may transfer title to the Property to a third party within one year of the Closing Date without first obtaining the written consent of DEDA if Buyer has completed construction of the

Housing Unit in accordance with the requirements of the Program and the Plans and Specifications, and a Certificate of Occupancy has been issued as set forth above.

14. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

15. Indemnity

Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless DEDA and the City and their officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement.

Buyer 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. Buyer'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 Buyer 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.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Buyer is required to indemnify DEDA or the City under this Agreement, DEDA shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to DEDA and/or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA and/or the City with respect to which indemnity may be sought against Buyer, DEDA and/or the City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 14 shall survive the Closing and cancellation of this Agreement for any reason.

16. Assumption of Risk

Buyer agrees that it 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 Buyer shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Buyer 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 Buyer's intended use may not have been revealed by Buyer's investigations.

17. No Representations by DEDA

Without limitation, Buyer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the

Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 16 shall survive the Closing and cancellation of this Agreement for any reason.

18. Taxes and Costs

Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the parties believe the Property is currently property tax-exempt). Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, all title company costs, except for the cost of the Title Commitment which will be paid by DEDA, and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement.

19. Default and Remedies

In the event that Buyer 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 Buyer 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 9 and 11, at its option, exercise any one or more of the rights and remedies described below. 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 Buyer hereunder or the failure of DEDA to declare default on the part of Buyer 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 Buyer of the

same or any other obligation of Buyer hereunder and, to be effective, any waiver of any default by Buyer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by DEDA as a result of Buyer's default.
- b. DEDA may seek and be entitled to receive reconveyance of the Property from Buyer, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.
- c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Buyer'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.

20. Subordination

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

21. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, the Housing Unit, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder (an "Assignment"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by Buyer. If an Assignment is approved by the Executive Director, the assignee shall explicitly assume the obligations of Buyer under this Agreement and

Buyer shall remain liable for the performance of Buyer's obligations under this Agreement.

22. Publicity

Within 30 days of issuance of the Certificate of Occupancy, Buyer shall provide the following information regarding the Project to the Executive Director: photos of the interior and exterior of the Housing Unit, the Plans and Elevations described in Exhibit A, the construction timeline and budget, and other pertinent information regarding the construction of the Housing Unit (collectively, the "Project Information"). Buyer agrees that the Project may be featured publicly and may include publication of the Project Information. Project Information may also be published on the City's website.

23. 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 regular U.S. Mail, registered mail, or certified mail, postage prepaid; or hand delivered to:

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

In the Case of Buyer:	Sarah Wright 1556 S Field Ct. Lakewood, CO 80232
-----------------------	--

24. No Real Estate Broker

Buyer represents and warrants to DEDA that this Agreement is made and entered into without the aid or assistance of a Buyer's broker or other Buyer's agent, and Buyer hereby represents and warrants to DEDA that Buyer has not entered into an agreement or made any undertaking of any kind whatsoever as a result of which any claim could properly be brought against DEDA for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

25. Construction

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.

26. 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.

27. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between Buyer and DEDA and, except as provided for in Paragraph 14 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 Buyer, may be waived at any time by mutual agreement between DEDA and Buyer.

28. Independent Contractor

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 Buyer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

29. 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.

30. Entire Agreement

The entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to the



Simply Tiny Development, LLC

By \_\_\_\_\_

Sarah Wright

Its Owner

STATE OF MINNESOTA )

) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:

Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
Duluth, Minnesota 55802

EXHIBIT A

**NON-EXCLUSIVE RIGHT TO USE**

I certify by signing below that I own all legal rights including all rights of use and the copyright on design development documents including site plan with landscaping, site elevations, any and all renderings, and floor plans (“Plans and Elevations”) dated \_\_\_\_\_ and submitted to the City of Duluth (“City”) by Simply Tiny Development, LLC in connection with:

Project: \_\_\_\_\_

Located at: 8xx N 6<sup>th</sup> Avenue E., Duluth, MN 55802

I hereby give the City non-exclusive permission to use the Plans and Elevations prepared by me or under my supervision or control for the Project, with the understanding that the City will credit me as the designer of the Plans and Elevations and will not use the Plans and Elevations for profit, and I grant the City the right to publish and to permit use of the same by the public at no cost.

I represent and warrant that the work created or prepared by me or under my supervision or control will be original and will not infringe upon the rights of any third party, and I further represent that the work will not have been previously assigned, licensed or otherwise encumbered.

I have read the foregoing before signing below and warrant that I fully understand the contents thereof.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Print name)

Position (if applicable): \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

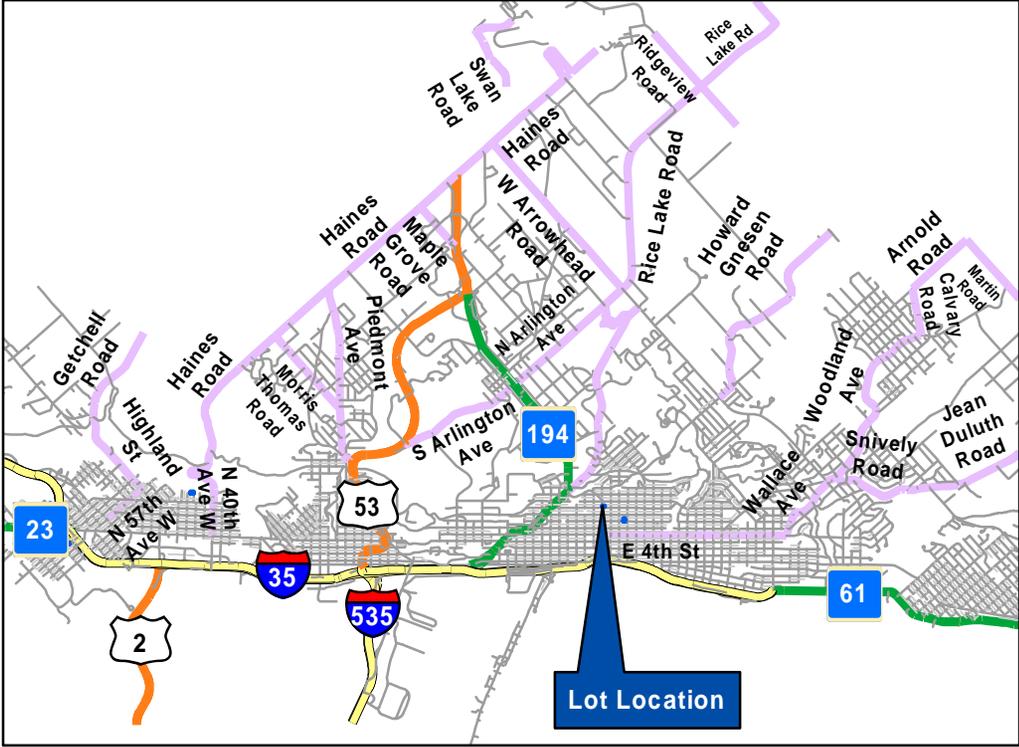
Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

*DATA PRACTICES NOTICE:*

*According to the Minnesota Government Data Practices Act, the information you provide on this form will be classified as government data. Most government data, including your name, address, e-mail address and telephone number, is public and is available to the public upon request. Some of the information you provide may be classified as private data. Furnishing the requested information is voluntary, but if you refuse to supply the requested information, you may not be considered for participation in the Project.*

# Site 5



**Parcel ID: 010-3490-02380**

**Neighborhood: Hillside**

**Dimensions: 30x100**

**Zoning: MU-N**

**Legal Description: North 30 feet of the South 75 feet of Lots 1 and 2, Block 14, Nortons Division of Duluth**

**Additional notes: The northeast corner of the lot has an elevation disadvantage. Additionally, parking will not be accessible in the alley.**



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

- Legend**
- Vacant Lot
  - Contours 1 Ft (Scale < 5000)
  - Index**
  - Intermediate
  - Index

## RESOLUTION NO. 20D-35

### RESOLUTION APPROVING THE ISSUANCE AND SALE OF HEALTH FACILITIES REVENUE BONDS, SERIES 2020D (ESSENTIA HEALTH OBLIGATED GROUP)

BE IT RESOLVED, by the Board of Commissioners of the Duluth Economic Development Authority, as follows:

- Section 1. Definitions. The terms used in this Resolution (1) have the meanings assigned below or (2) the meanings assigned to them in the Bond Indenture or the Loan Agreement, unless the context, use, or the rules of grammar indicate another or differing meaning or intent:
- a. Act: Minnesota Statutes, Sections 469.152 through 469.165, as amended.
  - b. Assignment: the integral assignment to the Obligated Group Note to be endorsed by DEDA in favor of the Bond Trustee.
  - c. Authorized Officers: the President and Secretary of DEDA, or the deputy or acting designee of either of them.
  - d. Board: the Board of Commissioners of DEDA, DEDA's governing body.
  - e. Bond Counsel: the law firm of Fryberger, Buchanan, Smith & Frederick, P.A.
  - f. Bond Indenture: the Bond Trust Indenture to be entered into between DEDA and the Bond Trustee.
  - g. Bond Trustee: U.S. Bank National Association, a national banking association with an office located in St. Paul, Minnesota, its successors and assigns.
  - h. Bonds: Health Facilities Revenue Bonds, Series 2020D (Essentia Health Obligated Group), as further described below.
  - i. Borrower: Essentia Health, the corporate offices of which are located at 502 East Second Street, in the City.
  - j. Borrower Documents: the Loan Agreement, the Master Indenture, the Supplemental Master Indenture, the Continuing Covenant Agreement and the Obligated Group Note.
  - k. City: the City of Duluth, Minnesota.
  - l. Code: the Internal Revenue Code of 1986, as amended.

- m. Continuing Covenant Agreement: the Continuing Covenant Agreement to be executed by the Borrower and the Purchaser.
- n. DEDA: the Duluth Economic Development Authority.
- o. DEDA Documents: collectively, the DEED Application, the Loan Agreement, the Bond Indenture and the Assignment.
- p. DEED: the Minnesota Department of Employment and Economic Development.
- q. DEED Application: the application submitted to DEED on behalf of DEDA, requesting approval of the proposal for the Project and the issuance of the Bonds.
- r. Documents: the DEDA Documents, the Borrower Documents, and other documents required for the issuance of the Bonds.
- s. Executive Director: the Executive Director of DEDA.
- t. Financing Purposes: financing the Project and paying costs of issuance of the Bonds.
- u. Host Cities: together the Cities of Cloquet, Park Rapids and Pine River, Minnesota.
- v. Loan Agreement: the Loan Agreement to be entered into between DEDA and the Borrower.
- w. Master Indenture: the Second Amended and Restated Master Trust Indenture dated as of November 1, 2018, as amended, between the Borrower, as Obligated Group Agent on behalf of itself and the other members of the Obligated Group, and the Master Trustee.
- x. Master Trustee: U.S. Bank National Association, as master trustee under the Master Indenture.
- y. Medical Campus: the area described as follows in the City: starting at the west side of Third Avenue East from its intersection with the south side of the alley above Superior Street, north to the north side of Fourth Street; then east to the intersection of the west side of Fourth Avenue East, then north to the north side of the alley above Fourth Street; then east to the east side of Fifth Avenue East; then south to the intersection of the east side of Fifth Avenue East and the north side of the alley above Third Street; then east along the north side of the alley to the east side of Sixth Avenue East, then south to the north side of Second Street; then east approximately ½ block; then south to the north side of First Street; then east approximately ½ block to the east side of Seventh Avenue East, then south along the east side of

Seventh Avenue East to Superior Street; then west along Superior Street to the east side of Fourth Avenue East; then north along the east side of Fourth Avenue East to the south side of the alley above Superior Street; then west to the west side of Third Avenue East at its intersection with the alley above Superior Street.

- z. Municipal Advisor: Raymond James & Associates, Inc., municipal advisor to the Borrower.
- aa. Obligated Group: a group composed of the Borrower and 13 of its affiliates, each of which has agreed in writing to be bound by the provisions of the Master Indenture.
- bb. Obligated Group Agent: Essentia Health, as obligated group agent under the Master Indenture.
- cc. Obligated Group Note: the promissory note of the Obligated Group, issued by the Borrower, as Obligated Group Agent, under the Master Indenture to DEDA.
- dd. Project: constructing, renovating, remodeling, expanding, rehabilitating, acquiring and equipping certain health facilities owned by the Borrower and one or more its affiliates, including (i) constructing and equipping an approximately 17,200-square foot, one-story outpatient clinic building to be located at 280 Barclay Ave. W., Pine River, MN (not to exceed \$6,500,000), (ii) renovating and equipping approximately 88,000-square feet of space within the Miller Hill Mall, 1600 Miller Trunk Hwy., Building C, Duluth, MN, to house a fitness and therapy center (not to exceed \$25,000,000), (iii) constructing and equipping an approximately 7,800-square foot, one-story outpatient clinic building to be located at 1413 Hwy. 33 S., Cloquet, MN (not to exceed \$4,400,000), (iv) remodeling an existing approximately 102,000 square-foot structure located at 1600 Miller Trunk Hwy., Duluth, MN, at which ambulatory surgical services, outpatient clinical services and/or support services will be provided (not to exceed \$50,000,000), (v) constructing and equipping an approximately 24,000-square foot, one-story outpatient clinic building to be located at 1103 First St. E., Park Rapids, MN (not to exceed \$8,000,000) and (vi) routine capital expenditures located and to be located within the Borrower's Medical Campus (not to exceed \$10,000,000).
- ee. Purchaser: Bank of America, N.A.
- ff. Qualified Services and Activities: health care facilities and services or revenue-producing facilities and services of organizations described in Section 501(c)(3) of the Code.
- gg. Registrar: bond registrar, paying agent, authenticating agent and transfer agent for the Bonds.

- hh. Special Tax Counsel: the law firm of Chapman and Cutler, LLP.
- ii. State: the State of Minnesota.
- jj. Supplemental Master Indenture: Supplemental Indenture Number Three to the Master Indenture between the Obligated Group Agent, on behalf of itself and the Members of the Obligated Group, and the Master Trustee.
- kk. Tax Certificate: the certificate of the Borrower, in customary form prepared by Special Tax Counsel and approved as to form by Bond Counsel to demonstrate compliance with the conditions of the Code, which allow for interest on the Bonds to be excludable from the gross income of the owners of the Bonds for federal income tax purposes (including any other bonds making up a single issue for federal income tax purposes).

Section 2. Summary of the Documents. Bond Counsel has provided the following information relating to the Documents:

- a. In the *Bond Indenture*, DEDA pledges and grants a security interest to the Bond Trustee in all of its right, title, and interest in the Obligated Group Note, the Loan Agreement (except for certain rights of DEDA to payment, indemnification and enforcement) and all moneys on deposit with the Bond Trustee under the Bond Indenture, for the benefit of the owners of the Bonds. The Bond Indenture sets forth the terms and conditions, covenants, rights, obligations, duties and agreements of the owners of the Bonds, DEDA and the Bond Trustee.
- b. In the *Loan Agreement*, DEDA loans the proceeds of the Bonds to the Borrower and the Borrower agrees to repay the loan in the amounts and at the times required to pay the principal of, premium, if any, and interest on the Bonds in full when due. In addition, the Loan Agreement contains provisions requiring the Borrower to pay the administrative and legal costs incurred by DEDA in connection with the Bonds (including post-issuance expenses, if any) and DEDA's administrative fee required by DEDA as a condition to issue the Bonds. In addition, the Borrower agrees and is obligated to indemnify, provide reports, and permit enforcement by DEDA of its rights under the Loan Agreement.
- c. The Borrower's payment obligations under the Loan Agreement are proposed to be secured by the *Obligated Group Note*, issued by the Obligated Group Agent under and according to the terms of the *Master Indenture* and payable and secured under the Master Indenture on the same basis as all other obligated group notes. The Obligated Group Note will be issued in a stated principal amount equal to the stated principal amount of the Bonds and will bear interest at the rate or rates payable from time to time on the Bonds. Each member of the Obligated Group is jointly and severally liable for payment of the Obligated Group Note. The Obligated

Group Note is initially payable to DEDA, and then assigned by DEDA to the Bond Trustee.

- d. The *Supplemental Master Indenture* is required under the Master Indenture to authorize issuance of the Obligated Group Note and to establish the terms of the Obligated Group Note.
- e. As required by the Code, DEDA will execute an endorsement to the *Tax Certificate*, in customary form prepared by Special Tax Counsel and approved as to form by Bond Counsel to demonstrate compliance with the conditions required for interest on the Bonds to be excludable from the gross income of the owners of the Bonds for federal income tax purposes.

Section 3. Reliance. The Board has relied without independent investigation on written representations and opinions of the Borrower, its consultants and Bond Counsel that the Project qualifies as a “project” as defined in Section 469.153, subdivision 2(d) of the Act.

Section 4. Recitals Regarding Proceedings. The Board makes the following recitals of fact:

- a. A notice of public hearing was published in the *Duluth News Tribune*, DEDA’s official newspaper and a newspaper of general circulation, calling a public hearing on the proposed issuance of the Bonds and the proposal of the Borrower to undertake and finance the Project.
- b. DEDA held a public hearing by telephone and other electronic means on the Project and the financing thereof on April 22, 2020, and all persons in attendance wishing to speak on the proposed issuance of the Bonds and the proposal of the Borrower to undertake and finance the Project, if any, were given an opportunity to do so.
- c. Drafts of the forms of the DEDA Documents have been made available to this Board and are on file in the office of the Executive Director.

Section 5. Recitals Regarding the Borrower and the Project. The Board makes the following recitals of fact:

- a. Bond Counsel has advised DEDA that:
  - i. the purpose of the Act, as found and determined by the legislature, is to promote the welfare of the State by the active promotion, attraction, encouragement and development of economically sound industry and commerce through governmental action to prevent, so far as possible, the emergence of blighted and marginal lands and areas of chronic unemployment;

- ii. under the Act, DEDA is authorized and empowered to issue revenue obligations such as the Bonds for the Financing Purposes.
- b. Factors necessitating the active promotion and development of economically sound industry and commerce are the increasing concentration of population in the metropolitan areas and the rapidly rising increase in the amount and cost of governmental services required to meet the needs of the increased population and the need for development of land uses which will provide an adequate tax base to finance these increased costs and access to employment opportunities for the area population.
- c. DEDA has been advised by representatives of the Borrower that: (i) it is a Minnesota nonprofit corporation; (ii) that it and each other member of the Obligated Group is an organization described in Section 501(c)(3) of the Code; (iii) it and its affiliates benefitted by the Bonds are each engaged in Qualified Services and Activities; (iv) conventional financing to pay the capital cost of the Project is available only on a limited basis and at such high costs of borrowing that the economic feasibility of its operations would be significantly reduced; (v) on the basis of information submitted to the Borrower and its discussions with representatives of area financial institutions and potential buyers of tax-exempt bonds, the Bonds could be issued and sold upon favorable rates and terms to finance the Project; (vi) the Project would not be undertaken in its present form but for the availability of financing under the Act; and (vii) no public official of DEDA has either a direct or indirect financial interest in the Project nor will any public official either directly or indirectly benefit financially from the Project.
- d. The Borrower has agreed to pay any and all costs incurred by DEDA in connection with the issuance of the Bonds, whether or not the issuance is carried to completion.

Section 6. Findings. The Board finds, determines and declares as follows:

- a. The welfare of the State requires the provision of necessary health care facilities so that adequate health care services are available to residents of the State at reasonable cost.
- b. DEDA desires to facilitate the selective development of the State, retain and improve the tax base and help provide the range of services and employment opportunities required by the population. The Project will assist DEDA in achieving those objectives; help to stabilize market valuation of the City; help maintain a positive relationship between assessed valuation and debt; and enhance the image and reputation of the State.
- c. On the basis of information made available to DEDA by the Borrower, it appears, and DEDA finds, that: (i) the Project constitutes properties, used or useful in connection with a revenue producing enterprise providing health

care services; (ii) the Project furthers the purposes stated in the Act; (iii) the Project would not be undertaken but for the availability of financing under the Act and the willingness of DEDA to furnish financing; and (iv) the effect of the Project, if undertaken, will be to: (A) encourage the development of economically sound industry and commerce, (B) assist in the prevention of the emergence of blighted and marginal land, (C) help prevent chronic unemployment, (D) provide the range of service and employment opportunities required by the population, (E) help prevent the movement of talented and educated persons out of the State where their services may not be as effectively used, (F) promote more intensive development and appropriate use of land within the State, eventually to increase the tax base of the State; and (G) provide adequate health care services to residents of the State at a reasonable cost.

Section 7. Approval of the Project and the Bonds.

- a. The Project is approved. Issuance of the Bonds is approved and authorized.
- b. In order to finance the Financing Purposes, DEDA, based on representations of the Borrower, accepts the offer of the Purchaser to purchase the Bonds in an original aggregate principal amount of not to exceed \$70,000,000, at an initial annual interest rate approved by the Borrower, subject to adjustment as provided in the Bond Indenture and the Bonds, and upon the terms and conditions specified in this Resolution, the Bond Indenture and the Bonds. The Bonds shall contain a recital that they are issued pursuant to the Act as conclusive evidence of their validity and of the regularity of their issuance. The Bonds will bear the designation set forth in the definition of "Bonds."
- c. The Bonds must be in substantially the form attached to the Bond Indenture, with appropriate variations, omissions and insertions permitted or required by this Resolution, and as may be necessary and appropriate and approved by Bond Counsel and the Borrower. The Bonds are incorporated by reference.
- d. The Authorized Officers are authorized and directed to execute, acknowledge and deliver the Bonds. The seal of DEDA may be omitted as allowed by law. The execution of the Bonds by the Authorized Officers is conclusive evidence of approval of the Bonds in accordance with the terms of this Resolution.

Section 8. Approval and Execution of Documents and Certificates.

- a. The DEDA Documents and the Bonds are made a part of this Resolution and are approved in substantially the forms on file with DEDA. The Authorized Officers are authorized and directed to execute and deliver the DEDA Documents and the endorsement to the Tax Certificate with

changes, insertions and omissions approved by Bond Counsel. The Authorized Officers are authorized and directed to execute, acknowledge and deliver the DEDA Documents and the Bonds on behalf of DEDA with such changes, insertions and omissions therein as DEDA's attorney or Bond Counsel may hereafter approve. The seal of DEDA may be omitted as allowed by law.

- b. The Authorized Officers and other officers and members of DEDA (individually or with one or more other officers and members of DEDA) are authorized and directed to (i) execute and deliver all other documents which may be required under the terms of the DEDA Documents or the Bonds or by Bond Counsel; (ii) take any other action required or deemed appropriate on the advice of Bond Counsel for the performance of DEDA's duties necessary to carry out the purposes of the Bonds and the DEDA Documents; and (iii) furnish certified copies of this Resolution, all proceedings and records of DEDA relating to the Bonds, and any other affidavits and certificates required, in the opinion of Bond Counsel, to show the facts relating to DEDA respecting the Bonds, as the facts appear from the books and records in DEDA's custody and control or as otherwise known to them.
- c. The execution by the Authorized Officers of the DEDA Documents is conclusive evidence of their approval in accordance with the terms of this Resolution.
- d. The Borrower Documents are accepted in substantially the forms on file with DEDA.

Section 9. Absent or Disabled Officers. If any of the Authorized Officers or any other officer, employee or agent of DEDA authorized to execute certificates, instruments, or other written documents on behalf of DEDA:

- a. ceases to be an officer, employee or agent of DEDA after he or she has executed any certificate, instrument or other written document, the validity or enforceability of the certificate, instrument or other written document signed by them is not affected; or
- b. is unavailable to execute certificates, instruments or other written documents, the certificates, instruments or other written documents may be executed by a deputy or assistant to the unavailable officer, or any other officer of DEDA who is, in the opinion of Bond Counsel, authorized to sign the certificates, instruments or other written documents, with full force and effect.

Section 10. Future Amendments.

- a. After the adoption of this Resolution, but prior to the issuance and delivery of the Bonds to the Purchaser, the original aggregate principal amount of

the Bonds, the maturity date of the Bonds, the principal amount of the Bonds due on each payment date, the interest rate of the Bonds prior to the first Mandatory Tender Date (as defined in the Bond Indenture), the date of the documents referenced in this Resolution and the Bonds, and the terms of redemption of the Bonds may be established or modified by the Borrower with the approval of the Authorized Officers; provided that the aggregate principal amount of the Bonds may not be increased from the amounts set forth in this Resolution.

- b. The authority to approve, execute and deliver, on behalf of DEDA, future amendments to the Loan Agreement are delegated to the Authorized Officers, subject to the conditions established in the Bond Indenture and Loan Agreement; provided that the Board must approve any changes which, in the opinion of Bond Counsel affect the Unassigned Rights, as defined in the Bond Indenture.
- c. The authorization given above is an authorization for the execution and delivery of any certificates and related items required to demonstrate compliance with the agreements being amended and the terms of this Resolution. The execution of any instrument by one or more of the Authorized Officers is conclusive evidence of the approval in accordance with the terms of this Resolution.

Section 11. Registered Form. The Bonds must be issued only in fully registered form, numbered and in such denominations as provided in the Bond Indenture.

Section 12. Bond Trustee; Bond Registrar; Paying Agent. DEDA appoints the Bond Trustee as trustee, registrar and paying agent for the Bonds.

Section 13. Limitations.

- a. *Limitation on Payment and Nature of Security.* The revenues and proceeds derived from the DEDA Documents are specifically pledged to the payment of the principal of and interest on the Bonds in the manner and to the extent specified in this Resolution, the Bonds and the Documents; and nothing in this Resolution, the Bonds and the Documents assigns, pledges or otherwise encumbers any other funds or assets of DEDA. The Bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of DEDA, except the portion of the Project mortgaged or otherwise encumbered under the provisions and for the purposes of the Act. Notwithstanding anything contained in the Resolution, the Bonds or the Documents or any other document referred to in the Resolution, the Bonds or the Documents to the contrary, under the provisions of the Act, the Bonds may not be payable from nor charged upon any funds other than the revenue pledged to its payment under the DEDA Documents. No holder of the Bonds will ever have the right to compel any exercise of the taxing power of DEDA to pay the Bonds or the interest thereon, or to enforce payment of

the Bonds against any property of DEDA except the portion of the Project mortgaged or otherwise encumbered under the provisions and for the purpose of the Act. The Bonds are not a debt of DEDA within the meaning of any constitutional or statutory limitation. However, nothing impairs the rights of the holder of the Bonds to enforce covenants made for the security of the Bonds as provided in Section 469.163 of the Act.

- b. *Limitation of Liability.* DEDA is not subject to any liability on the Bonds. No agreement, covenant or obligation contained in this Resolution or in the Documents is an agreement, covenant or obligation of any member of the Board, or of any officer, employee or agent of DEDA in that person's individual capacity. Neither the members of the Board, nor any officer executing the Bonds or the Documents, is liable personally on the Bonds or subject to any personal liability or accountability by reason of the issuance of the Bonds or execution of the Documents.
- c. *Limitation on Rights Conferred.* Nothing in this Resolution or in the Documents will or is intended to be construed to confer upon any person (other than as provided in the Bonds, the DEDA Documents, and the other agreements, instruments and documents by approved in this Resolution) any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision of this Resolution.

Section 14. Offering and Disclosure Materials. DEDA has not participated in the preparation of any offering materials relating to the Bonds and has made no independent investigation with respect to any matters which may be disclosed in such offering materials.

Section 15. DEED Approval; Conditions Precedent.

- a. The Authorized Officers are authorized and directed to work with Bond Counsel to facilitate submission of the DEED Application to DEED, and other officers, employees and agents of DEDA are authorized to provide DEED with any information it requires. Bond Counsel is authorized and directed to submit the DEED Application to DEED requesting approval.
- b. Notwithstanding anything in this Resolution to the contrary, delivery of the Bonds is subject to and contingent upon the following:
  - i. the Project and the issuance of the Bonds are approved by DEED;
  - ii. the Project and the issuance of the Bonds are approved by the Mayor of the City, in a separate writing;
  - iii. each of the Host Cities has consented to the issuance by DEDA of the Bonds financing the portion of the Project located in its jurisdiction; and

- iv. the Borrower has agreed in writing to pay DEDA its administrative fee in the amount equal to 0.25% of the final stated principal amount of the Bonds.

Section 14. Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

Section 15. Effective Date. This resolution shall take effect immediately.

Approved by the Duluth Economic Development Authority this 22<sup>nd</sup> day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: This resolution authorizes the issuance of tax-exempt bonds by DEDA (the "Bonds") to finance improvements to health care facilities owned and operated by Essentia Health or one or more of its affiliates located in Duluth and the Cities of Cloquet, Park Rapids and Pine River, Minnesota.

**RESOLUTION 20D-36**

**RESOLUTION AUTHORIZING A CONTAMINATION CLEANUP GRANT APPLICATION IN AN AMOUNT NOT EXCEED \$134,946 TO THE MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT RELATING TO PROPERTY LOCATED AT 2102 WEST SUPERIOR STREET AND COMMITTING A DEVELOPER MATCH OF NOT LESS THAN TWENTY-FIVE PERCENT OF THE AWARDED AMOUNT.**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that DEDA act as the legal sponsor for the project contained in the Contamination Cleanup Grant Application in an amount not to exceed \$134,946 to be submitted on May 1, 2020, and that the President and Secretary of DEDA are hereby authorized to apply to the Minnesota Department of Employment and Economic Development (DEED) for funding of this project on behalf of DEDA.

BE IT FURTHER RESOLVED, that DEDA has the legal authority to apply for financial assistance and the institutional, managerial and financial capability to ensure adequate project administration.

BE IT FURTHER RESOLVED, that the sources and amounts of DEDA match identified in the application in the amount of not less than twenty-five (25) percent of the grant award are committed to the project identified, said match to be provided by Duluth Lincoln Park1, LLC.

BE IT FURTHER RESOLVED, that DEDA has not violated any Federal, State or local laws pertaining to fraud, bribery, graft, kickback, collusion, conflict of interest or other unlawful or corrupt practice.

BE IT FURTHER RESOLVED, that upon approval of DEDA's application by the state, the president and secretary may enter into an agreement with the State of Minnesota for the above-reference project.

BE IT FURTHER RESOLVED, the DEDA certifies that it will comply with all applicable laws and regulations as stated in all contract agreements.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: Minnesota-based developer Duluth Lincoln Park1, LLC (Developer) intends to acquire the former Roberts Home Furnishing's site at 2102 West Superior Street, on which it will construct a new 75-unit apartment building. These units will range in price from \$1,014 to \$1,695 per month, and the Developer has agreed to lease 23 units at rates that are at or below 80% of Area Median Income.

The purpose of this resolution is to authorize DEDA to submit a Minnesota DEED Contamination Cleanup Grant application to assist the Developer with costs associated with the contamination clean up and remediation. The Developer enrolled the site in the State's Voluntary Investigation and Cleanup (VIC) Program and has completed the required environmental due diligence work via Phase I and Phase II environmental investigations. Additionally, a Response Action Plan has been developed to direct the remediation work according to the findings from the Phase II environmental investigation.

The DEED Cleanup Grant provides an a grant award for up to 75% of the estimated total cost of the cleanup work and requires a local match of not less than 25% of the total costs, to be paid for by the Developer.

**RESOLUTION 20D-37**

**RESOLUTION AMENDING RESOLUTION 20D-21 MODIFYING AUTHORIZATION FOR A FIFTH AMENDMENT TO THE LEASE AGREEMENT WITH AAR AIRCRAFT SERVICES, INC. TO ABATE RENT FOR THE MRO FOR THE MONTHS OF MAY, JUNE AND JULY, 2020.**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that DEDA Resolution No. 20D-21 is hereby amended to authorize a Fifth Amendment to the Lease Agreement (DEDA Contract No. 12 65 666), substantially in the form of that attached hereto, with AAR Aircraft Services, Inc., abating rent payable under the Lease for the months of May, June and July, 2020.

Approved by the Duluth Economic Development Authority this 22<sup>nd</sup> day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to amend DEDA Resolution No. 20D-21 to authorize abatement of AAR's rent for the MRO facility for the months of May, June and July, 202 instead of the previously-authorized April, May and June. AAR had previously submitted payment for April, and the modification will simplify accounting for both DEDA and AAR.

FIFTH AMENDMENT TO LEASE AGREEMENT  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
NWA MRO FACILITY  
AAR AIRCRAFT SERVICES, INC.

THIS FIFTH AMENDMENT TO LEASE AGREEMENT, entered on the day of \_\_\_\_\_, 2020, , by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and AAR AIRCRAFT SERVICES, INC., a corporation created and existing under the laws of the State of Illinois, hereinafter referred to as "Lessee".

WHEREAS, the parties hereto entered into a Lease Agreement dated June 29<sup>th</sup>, 2012 bearing DEDA Contract No. 12 65 666, which Lease Agreement was amended by the First Amendment to Lease Agreement entered into on July 19, 2012, a Second Amendment to Lease entered into on January 23, 2013, a Third Amendment to Lease entered into on September 15, 2015, and a Fourth Amendment to Lease entered into July, 1, 2019 which Lease Agreement, First Amendment to Lease Agreement, Second Amendment to Lease, Third Amendment to Lease, and Fourth Amendment to Lease are hereinafter collectively referred to as the "Lease" for the lease of the therein-defined Leased Property and Leased Premises to Lessee; and

WHEREAS, issues have arisen with the fire suppression control panel which have required costly human monitoring in order to provide effective fire suppression system for the Building, the responsibility for which is not presently subject to agreement between the parties; and

WHEREAS, contemporaneously with the fire suppression system problem and resulting costs, the airline industry, including AAR's major customer, have experienced a major reduction in airline travel due to the impacts of COVID-19 and a concomitant reduction in flights, resulting in a substantial reduction in Lessee's business at the Building; and

WHEREAS, Lessee has requested that DEDA afford Lessee some temporary relief from its financial obligations under the Lease to assist Lessee in addressing the impacts of COVID-19 on its operations in Duluth in keeping with the provisions of

Article XII of the Lease; and

WHEREAS, DEDA deems the effects of COVID-19 to be a Force Majeure event as described in said Article XII and hereby agrees to grant Lessee the following relief.

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

1. That nothing to the contrary in the Lease withstanding, Paragraph A of Article III of the Lease his hereby amended to provide that for the months of April, May, and June of 2020, the rent to be paid by Lessee shall be abated and the rent payable to DEDA those months shall be \$--00--.
2. That in all other respects, the Lease, together with all of its terms, covenants and conditions, is hereby confirmed in its entirety.

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

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY, an economic  
development authority

AAR AIRCRAFT SERVICES, INC., an  
Illinois Corporation

By \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
its President  
"Lessee"

Attest:

By \_\_\_\_\_  
Secretary

Approved:

Countersigned:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
City Auditor

STATE OF ILLINOIS            )  
  ) ss.

COUNTY OF COOK )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020y  
, the \_\_\_\_\_ of AAR Aircraft Services Inc., an Illinois corporation, on behalf of the  
corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )

) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_th day of \_\_\_\_\_, 2020,  
by \_\_\_\_\_ and \_\_\_\_\_, the President and Secretary of DEDA , an economic  
development authority created and existing under the Laws of the State of Minnesota, on behalf of  
DEDA.

\_\_\_\_\_  
Notary Public

This Lease Drafted by:  
Robert E. Asleson  
Attorney for the DEDA of Duluth  
Room 410 DEDA Hall  
Duluth, MN 55802  
(218) 730-5490

## RESOLUTION 20D-38

### RESOLUTION AUTHORIZING A SECOND AMENDMENT TO THE NOTE WITH PIER B HOLDING LLC.

RESOLVED, by the Duluth Economic Development Authority (“DEDA”) that DEDA hereby agrees that the date for payment of the entire principal amount and accrued, unpaid interest payable pursuant to that certain Note from Pier B Holding LLC, Borrower, to DEDA, Lender dated February 20, 2015 in the original principal amount of \$610,000 previously extended pursuant to DEDA Resolution No. 20D-13, is hereby further extended from May 20, 2020 to November 20, 2020, provided that interest shall continue to accrue during the term of said extension as provided for in the Note.

Approved by the Duluth Economic Development Authority this 22<sup>nd</sup> day of April, 2020.

ATTEST:

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Executive Director

#### STATEMENT OF PURPOSE:

The purpose of this resolution is to authorize an additional extension of the payment date for the balloon payment on the Note signed by Pier B in conjunction with the development of the Silos until November 22, 2020.

Pursuant to DEDA Resolution 20D-13, DEDA have previously granted 90 day extension to facilitate the refinancing of the project. Since that time, the advent of the COVID-19 emergency has had a devastating impact on Pier B’s occupancy and restaurant business. This extension would assist them in dealing with the resulting cash flow issues.

Interest would continue to accrue during the term of the additional extension.

**RESOLUTION 20D-39**

**RESOLUTION AUTHORIZING A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH NORTHSTAR DEVELOPMENT INTERESTS, LLC RELATED TO THE VOYAGEUR LAKEWALK INN REDEVELOPMENT**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Third Amendment to the Development Agreement, substantially in the form of that attached hereto (DEDA Contract No. 19 860 927<sup>3</sup>) with Northstar Development Interests, LLC ("Developer") related to the Voyageur Lakewalk Inn Redevelopment, extending the time for commencement and completion of construction and providing for issuance of the Tax Increment Financing Note concurrent with the closing on Developer's financing.

Approved by the Duluth Economic Development Authority this 22<sup>nd</sup> day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to approve a Third Amendment to the Development Agreement with Developer extending the time within which Developer must commence and complete construction of the Voyageur Lakewalk Inn Redevelopment project and providing for issuance of the Tax Increment Financing Note concurrent with the closing on Developer's financing. The project, located at 319, 321, 323 and 333 East Superior Street, will be developed into an approximately fifteen-story multi-family residential and mixed-use development on the site in downtown Duluth.

The project was originally anticipated to begin construction no later than December 31, 2019, but the commencement deadline was extended due to pre-development challenges, including final selection of a lender, finalizing bids from general contractors,

and negotiating a contract with Duluth Energy Systems to connect to the new hot water line in Superior St. A Second Amendment extended the deadline for construction to commence by April 30, 2020, allowing time for the Developer to secure a TIF Note lender. A TIF lender has now been identified. The Developer has closed on the acquisition of the property and is motivated to commence construction as soon as possible. Given the current uncertain market conditions, and in order to allow time for the Developer to finalize TIF Note financing, this Third Amendment extends the construction commencement to April 30, 2021 and the construction completion to June 20, 2024. Additionally, to provide a greater level of assurance to the Developer's lender, this resolution amends the Development Agreement to allow the issuance of the TIF Note to be concurrent with the closing on the Developer's construction financing. The adjustment to the issuance of the Note does not affect the amount of TIF provided to the project.

**DEVELOPMENT AGREEMENT  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
NORTHSTAR DEVELOPMENT INTERESTS, LLC  
VOYAGEUR LAKEWALK INN REDEVELOPMENT  
THIRD AMENDMENT**

THIS THIRD AMENDMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, is 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 NORTHSTAR DEVELOPMENT INTERESTS, LLC, a Delaware limited liability company, whose address is 10 West Mifflin Street, Suite 400, Madison, WI 53703 (hereinafter referred to as "Developer").

WHEREAS, on August 26, 2019, DEDA and Developer entered into a Development Agreement pursuant to which Developer agreed to develop/redevelop certain property located at 333, 319, 321 and 323 East Superior Street in downtown Duluth into a fifteen story multi-family residential rental and mixed use development; and

WHEREAS, on December 18, 2019, the parties entered into a First Amendment to the Development Agreement extending by three months the time within which Developer must commence construction; and

WHEREAS, on December 18, 2019, the parties entered into a Second Amendment to the Development Agreement (the Development Agreement and First and Second Amendments hereinafter referred to as the "Agreement") extending by four months the time within which Developer must commence construction; and

WHEREAS, the parties desire to further amend the Agreement to extend the time within which Developer must commence and complete Project construction and to provide for the TIF Note to be issued concurrent with the closing on Developer's construction financing.

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

1. Paragraph A. Construction, of Article VII, Construction, is hereby amended in its entirety as follows:

Upon the fulfillment of the preconditions to construction provided for in Articles IV and VI above, but in no event later than April 30, 2021, Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article VI. Construction of the Project shall be completed, as evidenced by receipt of a Certificate of Occupancy from the City of Duluth, not later than June 20, 2024.

2. Concurrent Paragraph A. of Article IX, Payment Obligations, is hereby amended in its entirety as follows:

Concurrent with the closing on Developer's construction financing for the Project, DEDA shall execute and deliver to Developer a TIF Note substantially in the form of Exhibit F-1 in the amount of \$6,200,000. In the event Eligible Project Costs are less than \$6,200,000, the amount of the TIF Note shall be amended to reflect such lesser amount. Notwithstanding the issuance of the TIF Note, DEDA shall not make any payments pursuant to the TIF Note until Developer provides evidence of Eligible Project Costs in the amount of the TIF Note as provided for in Paragraph D of Article VII and until the issuance of the Certificate of Completion pursuant to Paragraph D of Article VII.

3. Paragraph B. of Article IX, Payment Obligations, is hereby amended in its entirety as follows:

Pursuant to the TIF Plan, DEDA's first receipt of Available Tax Increment was anticipated to be in 2021; however pursuant to Paragraph A of Article IX, no payments to the Developer will occur pursuant to the Note until the conditions of Paragraph A of Article IX have been fulfilled. Interest payable on the TIF Note in the amount of 5% per annum shall start to accrue upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article VII. There shall be no accrual of interest on unpaid interest. As required by statute, the amount of Available Tax Increment shall not exceed the amount of Eligible Project Costs incurred, paid, or otherwise contracted for by the Developer within 5 years of the date of certification by the St. Louis County Auditor of TIF District No. 31.

4. The first sentence of Paragraph E. Business Subsidy Goal, of Article XI, Business Subsidy, is hereby amended in as follows:

Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Developer agrees that on or before June 20, 2024, it shall have constructed the Project on the Property in accordance with this Agreement (the “Business Subsidy Goal”).

5. Paragraph H. Special Event of Default if Business Subsidy Goals Not Met, of Article XI, Business Subsidy, is hereby amended in its entirety as follows:

Developer agrees that if the Business Subsidy Goal of Project construction is not met by June 20, 2024, as determined in the sole discretion of DEDA, Developer shall not receive any tax increment financing assistance under this Agreement.

6. Exhibit F shall be deleted in its entirety and shall be replaced with Exhibit F-1 attached hereto.
7. Promptly upon execution of this Third Amendment, Developer agrees to record this Third Amendment in the offices of the St. Louis County Recorder and the Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of the Third Amendment showing the date and document numbers of record, or a certified copy of the filed original.
8. This Third Amendment 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.
9. Except as provided in this Third Amendment, all terms and conditions of the Agreement shall remain in force and effect.

[The remainder of this page is intentionally left blank.]





**EXHIBIT F-1**

**TIF NOTE**

Principal Amount	Annual Rate
\$6,200,000	5.00%

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

TAX INCREMENT FINANCING (TIF) REVENUE NOTE  
(VOYAGEUR LAKEWALK INN DEVELOPMENT)

The Duluth Economic Development Authority, an economic development authority created and existing pursuant to Minnesota Statutes Chapter 469 (“DEDA”), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay Northstar Development Interests, LLC, a Delaware limited liability company (the “Developer”), or its registered assigns (the “Registered Owner”), the principal amount of Six Million Two Hundred Thousand and no/100ths Dollars (\$6,200,000.00), as set forth in Paragraph A of Article IX of that certain Development Agreement between DEDA and the Developer dated August 26, 2019, and bearing DEDA Contract No. 19 860 927, as may be amended from time to time (the “Agreement”), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

This TIF Note is issued pursuant to the Agreement. Terms are defined in this TIF Note or in the Agreement. As set forth in Paragraph A of Article IX, no payment shall be made under this TIF Note until such time as Developer provides evidence of Eligible Project Costs in the amount of at least \$6,200,000 and until the issuance of the Certificate of Completion pursuant to Paragraph D of Article VII. In the event Eligible Project Costs are less than \$6,200,000, then this TIF Note shall be amended to reflect such lesser amount. The principal amount of this TIF Note shall bear interest at the annual rate specified above and interest shall start to accrue upon DEDA’s issuance of the Certificate of Completion. There shall be no accrual of interest on unpaid interest. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

This Note is issued and payable solely from Available Tax Increment, as defined in the Agreement, actually received and retained by DEDA. DEDA shall pay to the Registered Owner of the TIF Note bi-annual payments in the amount of the Available Tax Increment payable on August 1 and February 1 of each year, commencing the next

biannual payment after the issuance of the Certificate of Completion and will continue biannually until February 1, 2048, or, if the 1st should not be a business day the next succeeding business day (the "Scheduled Payment Dates"). Available Tax Increment shall first be applied to accrued interest and then to principal.

This Note shall terminate and be of no further force and effect following (a) February 1, 2048; (b) any date upon which the Agreement or this TIF Note has terminated under said Agreement; or (c) on the date that all principal and interest payable hereunder shall have been paid in full; whichever occurs earliest. This TIF Note may be prepaid in whole or in part at any time without penalty.

DEDA makes no representation or covenant, express or implied, that the Available Tax Increment will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

DEDA's payment obligations hereunder shall be further conditioned on the fact that no Event of Default by Developer under the Agreement shall have occurred and be continuing, but such unpaid amounts shall become payable, without interest accruing thereon in the meantime, if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Agreement DEDA elects to terminate the Agreement or this TIF Note, DEDA shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Agreement for a fuller statement of the rights and obligations of DEDA to pay the principal of this TIF Note and the interest thereon, and said provisions are hereby incorporated into this TIF Note as though set out in full herein.

THIS TIF NOTE IS A SPECIAL, LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF DEDA OR THE CITY OF DULUTH (THE "CITY") AND IS PAYABLE BY DEDA ONLY FROM THE SOURCES AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS TIF NOTE IS NOT A GENERAL OBLIGATION OF DEDA OR THE CITY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF DEDA OR THE CITY ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS TIF NOTE AND NO PROPERTY OR OTHER ASSET OF DEDA OR THE CITY, SAVE AND EXCEPT THE ABOVE REFERENCED PLEDGED AVAILABLE RELATED TAX INCREMENTS, IS OR SHALL BE A SOURCE OF PAYMENT OF DEDA'S OBLIGATIONS HEREUNDER.

The Registered Owner shall never have or be deemed to have the right to compel any exercise of any taxing power of DEDA, the City or of any other public body, and neither DEDA, the City nor any person executing or registering this TIF Note shall be liable personally hereon by reason of the issuance or registration thereof or otherwise.

This TIF Note is issued by DEDA in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.1799, the Minnesota Tax Increment Act.

THIS TIF NOTE HAS NOT BEEN REGISTERED UNDER ANY FEDERAL OR STATE SECURITIES LAWS AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, OR OTHERWISE DISPOSED OF OR TRANSFERRED EXCEPT AS PROVIDED FOR IN THE AGREEMENT.

This TIF Note may be assigned only as provided in the Agreement and, upon such assignment, the assignor shall promptly notify DEDA at the office of the Executive Director by registered mail, and the assignee shall surrender the same to the Executive Director either in exchange for a new fully registered note or for transfer of this Note on the registration records for the TIF Note maintained by DEDA. Each permitted assignee shall take this TIF Note subject to the foregoing conditions and subject to all provisions stated or referenced herein and in the Agreement.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this TIF Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this TIF Note, together with all other indebtedness of DEDA outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of DEDA to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the Duluth Economic Development Authority, by its Board of Commissioners, has caused this TIF Note to be executed by the manual signatures of the President and the Secretary of DEDA and has caused this Note to be issued on and dated \_\_\_\_\_, 20\_\_\_\_.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its Secretary

\_\_\_\_\_

Approved as to form  
Assistant City Attorney

**CERTIFICATION OF REGISTRATION**

It is hereby certified that the foregoing TIF Note, as originally issued on \_\_\_\_\_, 20\_\_\_\_, was on said date registered in the name of Northstar Development Interests, LLC, a Delaware Limited Liability Company, and that, at the request of the Registered Owner of this TIF Note, the undersigned has this day registered the TIF Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

<b><u>Name and Address of Registered Owner</u></b>	<b><u>Date of Registration</u></b>	<b><u>Signature of Secretary</u></b>
Northstar Development Interests, LLC _____ _____	_____, 20____	_____

**RESOLUTION 20D-41**

**RESOLUTION RESCINDING RESOLUTION 20D-24 AND AUTHORIZING  
AN AGREEMENT WITH THE NORTHEAST ENTREPRENEUR FUND, INC.  
TO IMPLEMENT THE DULUTH SMALL BUSINESS  
EMERGENCY FUND IN THE AMOUNT OF \$443,000**

RESOLVED by the Duluth Economic Development Authority (DEDA) that Resolution 20D-24 which authorized the Executive Director to enter into an agreement with the Northeast Entrepreneur Fund, Inc. (the "Entrepreneur Fund") to implement DEDA's Small Business Emergency Loan Program in the amount of \$90,000 is hereby rescinded.

FURTHER RESOLVED, that the that the proper DEDA officials are hereby authorized to execute an agreement with the Entrepreneur Fund substantially in the form the attached as Exhibit A to implement the Duluth Small Business Emergency Fund in the amount of \$443,000, payable from Fund 860.

Approved by the Duluth Economic Development Authority this 22<sup>nd</sup> day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: At its April 3, 2020, special board meeting, DEDA authorized the Executive Director to enter into an Agreement with the Entrepreneur Fund to implement DEDA's Small Business Emergency Loan Program in the amount of \$90,000. Since that time, the program guidelines have been refined, the name of the program has been revised to "Duluth Small Business Emergency Fund" and the total dollar amount has been increased. Due to the changes in the program, Resolution 20D-24 authorizing the \$90,000 Agreement is rescinded.

This Resolution authorizes an Agreement with the Entrepreneur Fund in the amount of \$443,000 which will provide assistance to business owners who are facing significant

challenges due to the COVID-19 peacetime emergency declaration. The funding will consist of \$43,000 in the form of a grant and \$400,000 in the form of a “non-recourse loan” to the Entrepreneur Fund, some of which will be repaid to DEDA at 0% interest. Of the grant fund amount, \$40,000 will be used for loan origination, loan closing and loan servicing, and \$3,000 will be used for the Duluth Small Business Emergency Fund landing page and marketing. The remainder of the funds will provide small business loans to borrowers in the City of Duluth.

The interest rate on the loans will be 0.5% and the term will be up to 5 years. The minimum loan is \$2,000 and the maximum is \$20,000. The borrower must demonstrate that the need for the loan is primarily based on the impact of the COVID-19 emergency and that the amount of the loan is necessary to maintain financial viability. Up to 25% of a loan may be forgiven if the business returns to operation in the community at substantially the same levels within two years following loan disbursement and operates for 12 months at that level.

The Northeast Entrepreneur Fund will remit to DEDA amounts it receives from borrowers’ repayments. Any losses of capital loaned to borrowers or forgiveness of borrower’s repayment obligations under any loan will not be required to be paid back by the Entrepreneur Fund to DEDA. Exhibit B outlines a potential budget for the program.

Under a separate agreement, DEDA’s Executive Director will be entering into an agreement with Northland Foundation in the amount of \$30,000 regarding its Northeast Minnesota Small Business Development Center (SBDC) to provide essential business consulting services to businesses located in Duluth as they assist business with navigating applications for Federal, State, and business loan applications. This consulting assistance will also be available as businesses begin to restart operations. This consulting will be jointly coordinated with Entrepreneur Fund to maximize efficiency and benefit of assisting businesses in Duluth.

**AGREEMENT  
BY AND BETWEEN  
ENTREPRENEUR FUND, INC.  
AND  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY**

THIS AGREEMENT, effective as of \_\_\_\_\_, 2020 (the “Effective Date”), by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469 (1989) (“DEDA”), and the NORTHEAST ENTREPRENEUR FUND, INC (DBA: ENTREPRENEUR FUND)., a private, non-profit corporation under the laws of the State of Minnesota (“Service Provider”).

WHEREAS, DEDA desires to provide funding in the amount of \$443,000 to Service Provider to implement the Duluth Small Business Emergency Fund (the Program”) under the terms and conditions hereinafter set forth to allow Service Provider to make loans to qualifying businesses in the City; and

WHEREAS, Service Provider is able and willing to provide said service.

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

I. Program Funding and Other Terms

1. Generally

DEDA hereby agrees to provide funding to Service Provider in the amount of Four Hundred Forty-Three Thousand Dollars (\$443,000), payable upon invoice from DEDA Fund 860, subject to the terms and conditions hereinafter set forth. The funding shall consist of \$43,000 in the form of a grant and \$400,000 in the form of a “non-recourse loan” to Service Provider, some of which will be repaid to DEDA as set forth

below at 0% interest. Of the \$43,000 grant fund amount, \$40,000 will be used for loan origination, loan closing and loan servicing, and \$3,000 will be used for Duluth Small Business Emergency Fund landing page as described in Paragraph I 3 below and marketing. The \$400,000 non-recourse loan funds provided hereunder shall be used by Service Provider to provide small business loans (the “Loans”) to Borrowers (defined below) in the City of Duluth as described in Paragraph I 2 below in accordance with this Agreement including the Program Guidelines attached hereto as Exhibit A and incorporated herein. In the event of a conflict between Exhibit A and this Agreement, this Agreement shall be controlling.

2. Use of Proceeds

Proceeds shall be used to extend Loans to the businesses defined in the Program Guidelines (hereinafter referred to as “Borrowers”) having their employees work primarily within the corporate limits of the City of Duluth. All such Loans shall be made in conformance with said Program Guidelines.

3. Landing Web Page

Service Provider shall establish a landing web page on the Service Provider’s website that describes the Duluth Small Business Emergency Fund and will allow the City of Duluth and / or DEDA staff to review and provide comments and suggestions for marketing and branding for the Duluth Small Business Emergency Fund as a major contributor and founder.

4. Loan Documentation

Prior to extending any Loan to any Borrower, Service Provider shall give written notice to DEDA’s Executive Director (the “Executive

Director”) of its intent to make said Loan to said Borrower. Said notice shall include the name and address of the Borrower, the names and addresses of the principals having an interest in the Borrower, the nature and character of the business of the Borrower, the intended use of the Loan, the proposed term of the Loan, not to exceed five (5) years, and the justification for the term proposed for said Loan.

5. Loan Repayment

Service Provider agrees to remit to DEDA amounts it receives from Borrowers’ repayments on the \$400,000, at 0% interest, as well as any portion of the \$400,000 which Service Provider was not able to extend as Loans to Borrowers. The parties agree that any and all losses of capital loaned to Borrowers or forgiveness of Borrower’s repayment obligations under any Loan shall not be required to be paid back by Service Provider to the DEDA. Such remittance will be provided along with the regular quarterly and biannual reports set forth below beginning with the first quarterly report three years after the Effective Date.

6. Reporting

Service Provider will provide regular reports on the Loans to the Executive Director which will include a description of businesses supported by the program, an accounting of the Loans made during the time period, the percentage of any Loan to be forgiven (not to exceed 25%) during said reporting period along with the justification for the percentage of forgiveness to be granted, the source and amount of money collected and distributed by the program, the program’s assets and liabilities, and an explanation of administrative expenses. Service Provider will provide quarterly reports for years 1 through 3

and biannual reports for the remainder of the term of the Agreement.

7. Additional Donations to the Fund

DEDA fully supports Service Provider and others in soliciting additional corporate and foundation donors to contribute financial resources to the Duluth Small Business Emergency Fund.

II. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the DEDA and Service Provider only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

Service Provider represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the Executive Director.

3. Data and Confidentiality, Records and Inspection

a. Service Provider must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by DEDA under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Service Provider under this Agreement. Service Provider agrees to hold DEDA, its officers, and employees harmless from any claims resulting from Service Provider's failure to comply with this law. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by

Service Provider. If Service Provider receives a request to release the data referred to in this clause, Service Provider must immediately notify DEDA and consult with DEDA as to how Service Provider should respond to the request. Service Provider's response to the request must comply with applicable law.

- b. Records shall be maintained by Service Provider in accordance with requirements prescribed by the DEDA and Generally Accepted Accounting Principles and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- c. Service Provider will ensure that all costs shall be supported by properly executed invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- d. Service Provider shall be responsible for furnishing to the DEDA records, data and information as the DEDA may require pertaining to matters covered by this Agreement.
- e. Service Provider shall ensure that at any time during normal business hours and as often as the DEDA may deem necessary, there shall be made available to the DEDA for examination, all of its records with respect to all matters covered by this Agreement. Service Provider will also permit the DEDA to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters

covered by this Agreement.

4. Service Provider Representation and Warranties

Service Provider represents and warrants that:

- a. Service Provider and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the DEDA and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- b. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Service Provider is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Service Provider contrary to the terms of any instrument or agreement.
- c. There is no litigation pending or to the best of the Service Provider's knowledge threatened against the Service Provider affecting its ability to carry out the terms of this Agreement or its ability to carry out the terms and conditions of any other matter materially affecting the ability of the Service Provider to perform its obligations hereunder.
- d. The Service Provider will not, without the prior written consent of the DEDA, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and shall continue for a period of five years after the final Duluth Small Business Emergency Fund Loan has been extended to a Borrower, unless terminated earlier as provided for herein, except that any of the terms and conditions of this Agreement that, by their nature extend beyond the aforesaid date, shall continue to be force and effect as long as necessary for Service Provider to fulfill said obligations under this Agreement.

DEDA may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination of the Agreement without cause, Service Provider may retain a termination fee in the amount of \$3,000 plus 10% of the total amount of Loans originated. In the event of termination, all property and finished or unfinished documents and other writings prepared by Service Provider under this Agreement shall become the property of the DEDA and Service Provider shall promptly deliver the same to the DEDA. In the event the Agreement is terminated within six months of the Effective Date, Service Provider shall be remit to DEDA any DEDA monies not loaned to Businesses as of the date of termination of this Agreement. In the event of termination due to breach by Service Provider, the DEDA shall retain all other remedies available to it.

6. Independent Contractor

a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Service

Provider as an agent, representative or employee of the DEDA for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Service Provider and its employees shall not be considered employees of the DEDA, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Service Provider's employees while so engaged, and any and all claims whatsoever on behalf of Service Provider's employees arising out of employment shall in no way be the responsibility of DEDA. Except for compensation provided in Section II of this Agreement, Service Provider's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, DEDA shall in no way be responsible to defend, indemnify or save harmless Service Provider from liability or judgments arising out of intentional or negligent acts or omissions of Service Provider or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Service Provider expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the extent allowed by law, Service Provider shall defend, indemnify and hold DEDA, the City of Duluth and their employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Service Provider's a) breach of this Agreement or b) its negligence or misconduct or that of its agents or contractors in performing the services hereunder or c) any claims arising in connection with Service Provider's employees or contractors, or d) the use of any materials supplied by the Service Provider to the DEDA unless such material was modified by DEDA and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance

Service Provider shall obtain and maintain for the term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, shall be in a company approved by the DEDA of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. DEDA and the City of Duluth shall be named as Additional Insured by endorsement under the Public Liability and Automobile Liability, or as an alternate, Service Provider may provide Owners-Contractors Protective policy, naming itself, DEDA and the City of Duluth. Upon execution of this Agreement,

Service Provider shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.

- b. Service Provider shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- c. A certificate showing continued maintenance of such insurance shall be on file with the DEDA during the term of this Agreement.
- d. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider's interests and liabilities.

9. Defaults and Remedies

a. General Events of Default

The following shall be deemed to be general events of default by Service Provider under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- 1. Service Provider shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Service Provider pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Service Provider of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

2. Service Provider makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Service Provider or its business; or Service Provider files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Service Provider files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Service Provider's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Service Provider of any trustee, receiver or liquidator of any material part of Service Provider's properties.

b. General Remedies

Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by Service Provider:

1. Seek and be entitled to monetary damages from Service Provider for any damages incurred by DEDA as a result of Service Provider's default.
2. Recover any unexpended DEDA funds.
3. Seek and be entitled to injunctive or declaratory relief as is

necessary to prevent Service Provider's violation of the terms and conditions of this Agreement or to compel Service Provider's performance of its obligations hereunder.

4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

10. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

DEDA: Duluth Economic Development Authority  
411 W First Street  
City Hall Room 418  
Duluth MN 55802  
Attn: Executive Director

Service Provider: Entrepreneur Fund, Inc.  
202 West Superior Street, Suite 311  
Duluth, MN 55802  
Attn: Shawn Wellnitz

11. Civil Rights Assurances

Service Provider, as part of the consideration under this Agreement, does hereby covenant and agree that:

a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

12. Laws, Rules and Regulations

Service Provider agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement.

13. Applicable Law

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. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

14. Severability

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

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

**DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY**

By:

By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

**NORTHEAST ENTREPRENEUR  
FUND, INC., a Minnesota Non-  
profit Corporation**

By:

---

Shawn Wellnitz  
Its: President/CEO

## EXHIBIT A

### DULUTH SMALL BUSINESS EMERGENCY FUND

#### PROGRAM GUIDELINES

Effective immediately, DEDA authorizes the Northeast Entrepreneur Fund, Inc.. (“EF”) to develop and implement a partially forgivable loan program to small businesses through establishment of the Duluth Small Business Emergency Fund, regardless of such business’s organizational form (i.e., independent contractor, sole proprietorship, limited liability company, etc.).

Any business receiving a loan through the DEDA contribution to the Duluth Small Business Emergency Fund must demonstrate that it was directly and adversely affected by the COVID19 peacetime emergency declaration pursuant to Minnesota Governor Walz’s Emergency Executive Order 20-01 and subsequent Executive Orders. Under the Duluth Small Business Emergency Fund, small businesses are required to have claimed all applicable private insurance and utilized all other sources of applicable assistance available from other private Federal and State sources. Under the Duluth Small Business Emergency Fund, the EF will be authorized to issue emergency loans under the following conditions and terms:

- 1.) The business’s employees must primarily work within the City of Duluth.
- 2.) Establish a focused priority outreach and recruitment of small businesses that are owned by minority, women, veteran, and other disadvantaged populations.
- 3.) The interest rate will be 0.5% percent for a term of up to 5 years.
- 4.) No principal and interest payments will be required for the first 6 months.
- 5.) The minimum loan is \$2,000 and the maximum is \$20,000.
- 6.) The borrower must demonstrate that the need for the loan is primarily the impact of the COVID-19 emergency and that the amount of the loan is necessary to maintain financial viability and be accompanied by documentation supporting that determination.
- 7.) All loans will be secured by a blanket UCC and/or personal guarantee.
- 8.) The business must have operated long enough to demonstrate financial viability.
- 9.) The loan must not be used to refinance debt that existed at the time of the COVID-19 peacetime emergency declaration.
- 10.) Borrowers may receive grants from other private, state, or federal sources. However, borrower must disclose and document all other sources of financial support subsidies and demonstrate that all requested program funds are essential for survival and / or restarting of operations related to item #6 above.
- 11.) The term of the loans shall be up to 5 years. DEDA anticipates that all loans will be dispersed as soon as practical but not later than October 1, 2020 unless such timeframe is mutually extended by the Executive Director and Service Provider.
- 12.) Loan applications received during the COVID-19 peacetime emergency declaration will be eligible to be approved under these conditions.
- 13.) Up to 25% of a loan may be forgiven if the business returns to operating in the

community at substantially the same levels within two years following loan disbursement and operates for 12 months at that level. The Service Provider will establish the return to operation benchmarks with each Borrower prior to awarding the loan.

- 14.) Loans cannot be provided to businesses that:
  - a. Derive income from passive investments without operational ties to operating businesses
  - b. Primarily generate income from gambling activities
  - c. Generates any part of its income from adult-oriented activities
  - d. Have no current or historical financial statements
- 15.) Non-profits are ineligible except for those who operate social enterprise businesses. The use of loan proceeds can be for the social enterprise only.

**RESOLUTION 20D-42**

**RESOLUTION AUTHORIZING A GRANT AGREEMENT  
WITH THE ENTREPRENEUR FUND, INC.  
TO IMPLEMENT A COVID-19 EMERGENCY  
LOAN PROGRAM IN THE AMOUNT OF \$125,000**

RESOLVED by the Duluth Economic Development Authority (DEDA) that the proper DEDA officials are hereby authorized to enter into an agreement with the Entrepreneur Fund, Inc. substantially in conformance with the attached Exhibit A to implement a COVID-19 Emergency Loan Program in the amount of \$125,000, payable from fund 860.

Approved by the Duluth Economic Development Authority this 22<sup>nd</sup> day of April, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an agreement with the Entrepreneur Fund to implement a COVID-19 emergency loan program in response to the pandemic, the emergency declarations and the results thereof in the amount of \$125,000 to provide assistance to Duluth businesses. This program will be operated in conjunction with DEDA's Small Business Emergency Loan Program in the amount of \$443,000. The program will provide assistance to Duluth business owners who are facing significant challenges due to the COVID-19 peacetime emergency declaration.

As part of this agreement, Entrepreneur Fund is committing to obtain and loan to borrowers similarly situated to those for whom this program is intended an additional fund of at least \$1,000,000. The funds covered by this agreement will be loaned in accordance with the Entrepreneur Fund's standard operating procedures and practices.

**COVID-19 GRANT AGREEMENT  
BY AND BETWEEN**

**ENTREPRENEUR FUND, INC.  
AND  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY**

THIS AGREEMENT, effective as of \_\_\_\_\_, 2020 (the “Effective Date”), by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469 (1989), hereinafter referred to as “DEDA”, and the ENTREPRENEUR FUND, INC., a private, non-profit corporation under the laws of the State of Minnesota, hereinafter referred to as Grantee.

WHEREAS, DEDA and Grantee share the primary mission is to encourage economic development in the city of Duluth, through the stimulation of development and of the creation of new jobs in the city; and

WHEREAS, the advent of the COVID-19 pandemic, the resulting emergency orders by the President of the United States and the Governor of Minnesota has resulting in economic dislocation which in turn is producing severe economic hardship to businesses in the City of Duluth and giving rise to the need for emergency loans as hereinafter described to ameliorate the impacts of this crisis; and

WHEREAS, Grantee is seeking sources of funds which can be loaned to Duluth businesses affected by the aforesaid emergency which can be used to leverage other funding sources that can be used for that purpose; and

WHEREAS, DEDA is willing grant up to \$125,000 to Grantee under the terms and conditions hereinafter set forth to allow Grantee to make such loans to qualifying businesses in the city;

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

I. Grant

1. Generally

DEDA hereby agrees to grant to Grantee the amount of One Hundred

Twenty-five Thousand Dollars (\$125,000) subject to the terms and conditions hereinafter set forth. Grant proceeds shall be used by Grantee only in conformance with said terms and conditions.

2. Use of Grant Proceeds

All grant proceeds shall be used to extend loans, hereinafter referred to as the “Loans, to small businesses, as defined in the Program Guidelines, attached hereto and made a part hereof as Exhibit A, hereinafter referred to as “Borrowers, having their main base of operations and their employment within the corporate limits of the City of Duluth in need of financial assistance to address the impacts of the COVID-19 pandemic on their economic viability. All such loans shall be made in conformance with said Guidelines; provided, however, that in the event that the terms or conditions of the Guidelines shall conflict with the terms or conditions set forth in this Agreement, the terms and conditions of this agreement shall be deemed to be controlling.

3. Loan Documentation

Prior to extending any Loan to any Borrower, Grantee shall give written notice to DEDA’s Executive Director, hereinafter referred to as the “Executive Director”, of its intent to make said Loan to said Borrower. Said notice shall include the name and address of the Borrower, the names and addresses of the principals having an interest in the Borrower, the nature and character of the business of the Borrower, the amount and the source of the matching grant amount referenced in Section I 4 below and the intended use of the Loan.

4. Matching Requirement

Grantee agrees and commits that no later than the end of the term of this Agreement, Grantee shall have provided evidence to DEDA’s Executive Director establishing that Grantee has secured from sources other than DEDA and the City of Duluth at least \$1,000,000 for the purpose of making loans to Borrowers qualifying therefore under the terms and conditions of this Agreement and shall have loaned such

funds in conformance with this Agreement and the Guidelines.

II. Grant Proceeds Disbursement to Grantee

1. Time for Disbursement

Upon the signing of this Agreement, Grantee shall be entitled to invoice DEDA for the Grant amount provided for hereunder.

2. Source of Grant Funds

All funds granted to Grantee pursuant to this Agreement shall be payable from DEDA Fund 860.

3. Conditions of Disbursement

Grantee shall have provided to the Executive Director its Program Guidelines attached as Exhibit A, prior to be entitled to disbursement of the Grant funds hereunder.

III. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the DEDA and Grantee only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

Grantee represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the Executive Director.

3. Data and Confidentiality, Records and Inspection

a. All reports, data, information, documentation and material given to or prepared by Grantee pursuant to this Agreement will be confidential and will not be released by Grantee without prior authorization from the DEDA.

b. Grantee agrees that all work created by Grantee for the DEDA is a

“work made for hire” and that the DEDA shall own all right, title, and interest in and to the work, including the entire copyright in the work (“DEDA Property”). Grantee further agrees that to the extent the work is not a “work made for hire” Grantee will assign to DEDA ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Grantee agrees to execute, at no cost to DEDA, all documents necessary for DEDA to perfect its ownership of the entire copyright in the work. Grantee represents and warrants that the work created or prepared by Grantee will be original and will not infringe upon the rights of any third party, and Grantee further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

- c. Records shall be maintained by Grantee in accordance with requirements prescribed by the DEDA and Generally Accepted Accounting Principles and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- d. Grantee will ensure that all costs shall be supported by properly executed invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Grantee shall be responsible for furnishing to the DEDA records, data and information as the DEDA may require pertaining to matters covered by this Agreement.
- g. Grantee shall ensure that at any time during normal business hours and as often as the DEDA may deem necessary, there shall be made available to the DEDA for examination, all of its records with respect to all matters covered by this Agreement Grantee will also permit the DEDA to audit, examine, and make excerpts or

transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Grantee Representation and Warranties

Grantee represents and warrants that:

- a. Grantee and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Grantee and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the DEDA and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Grantee has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Grantee will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Grantee is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Grantee contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Grantee's knowledge threatened against the Grantee affecting its ability to carry out the terms of this Agreement or to carry out the terms and

conditions of any other matter materially affecting the ability of the Grantee to perform its obligations hereunder.

- f. The Grantee will not, without the prior written consent of the DEDA, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2021, unless terminated earlier as provided for herein except that any of the terms and conditions of this Agreement that, by their nature extend beyond the aforesaid date, shall continue to be force and effect as long as necessary for Grantee to fulfill said obligations under this Agreement.

In the event of termination due to breach by Grantee, the DEDA shall retain all other remedies available to it, and the DEDA shall be relieved from payment of any fees in respect of the services of Grantee which gave rise to such breach.

6. Independent Contractor

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Grantee as an agent, representative or employee of the DEDA for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Grantee and its employees shall not be considered employees of the DEDA, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Grantee's employees while so engaged, and any and all claims whatsoever on behalf of Grantee's employees arising out of employment shall in no way be the responsibility of DEDA. Except for compensation

provided in Section II of this Agreement, Grantee's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, DEDA shall in no way be responsible to defend, indemnify or save harmless Grantee from liability or judgments arising out of intentional or negligent acts or omissions of Grantee or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Grantee expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the extent allowed by law, Grantee shall defend, indemnify and hold DEDA and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Grantee's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Grantee's employees or contractors, or d) the use of any materials supplied by the Grantee to the DEDA unless such material was modified by DEDA and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance

Grantee shall obtain and maintain for the Term of this Agreement the

following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, shall be in a company approved by the DEDA of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. **DEDA of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Grantee may provide Owners-Contractors Protective policy, naming himself and DEDA of Duluth. **Upon execution of this Agreement**, Grantee shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. Grantee shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- c. A certificate showing continued maintenance of such insurance shall be on file with the DEDA during the term of this Agreement.
- d. The DEDA of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Grantee's interests and liabilities.

9. Defaults and Remedies

a. General Events of Default

The following shall be deemed to be general events of default by Grantee under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

1. Grantee shall fail to observe or perform any of the terms,

conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Grantee pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Grantee of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the date of said notice and to diligently pursue the same to completion.

2. Grantee makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Grantee or its business; or Grantee files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Grantee files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Grantee's properties or fails to have dismissed or vacated within sixty (60) days after the

appointment without the consent or acquiescence of Grantee of any trustee, receiver or liquidator of any material part of Grantee's properties.

b. General Remedies

Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by Grantee:

1. Seek and be entitled to monetary damages from Grantee for any damages, including consequential damages incurred by DEDA as a result of Grantee's default.
2. Cease making payments of Grant funds.
3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Grantee's violation of the terms and conditions of this Agreement or to compel Grantee's performance of its obligations hereunder.
4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

10. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

**DEDA:** Duluth Economic Development Authority  
411 W First Street  
City Hall Room 418  
Duluth MN 55802  
Attn: Executive Director

**Grantee:** Entrepreneur Fund, Inc.  
202 West Superior Street, Suite 311  
Duluth, MN 55802  
Attn: Shawn Wellnitz

11. Civil Rights Assurances

Grantee, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

12. Laws, Rules and Regulations

Grantee agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement.

13. Applicable Law

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.

14. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation,

acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

15. Severability

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

16. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits 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.

17. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.



**EXHIBIT A**  
PROGRAM GUIDELINES