

**MEETING OF THE
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
WEDNESDAY, JULY 28, 2021 – 5:15 P.M.
COUNCIL CHAMBERS, THIRD FLOOR, CITY HALL
AGENDA**

Please take notice that the Duluth Economic Development Authority (“DEDA”) will be holding its July 28, 2021 Regular meeting in-person in the City Council Chambers, 3rd Floor, Duluth City Hall, 411 West First Street, 55802. Members of the DEDA Board will be participating in-person in the City Council Chambers. Public comment during the meeting will be taken in person. Individuals interested in submitting comments electronically before 5:15 PM on July 28, 2021 may do so via DEDA’s website at <http://dulutheda.org/contact-us/> or via email at cfleege@duluthmn.gov. Please note that all public comment is considered Public Data.

The public is welcome to view the meeting live using the internet through WebEx Events, accessed through the website <https://duluthmn.gov/live-meeting>, and clicking through to “DEDA”. Please note: no comments can be accepted using the WebEx Events function, and it is available for viewing the meeting only.

1. CALL TO ORDER

2. PUBLIC TO ADDRESS THE COMMISSION

3. PUBLIC HEARINGS

RESOLUTION 21D-25: RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH MERGE, LLC FOR THE DEVELOPMENT OF THE URBANE DULUTH MULTI-FAMILY RESIDENTIAL PROJECT

RESOLUTION 21D-26: RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH SATURDAY ZENITH, LLC FOR THE DEVELOPMENT OF THE ZENITH HISTORIC OLD CENTRAL HIGH SCHOOL PROJECT

RESOLUTION 21D-27: RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH HUGHES OLSEN WORKSHOP LLC RELATED TO THE REBUILD DULUTH PROGRAM

RESOLUTION 21D-28: RESOLUTION APPROVING THE ISSUANCE AND SALE OF HEALTH FACILITIES REVENUE BONDS, SERIES 2021A (ST. LUKES’S HOSPITAL OF DULUTH OBLIGATED GROUP), AND HEALTH FACILITIES REVENUE BONDS, SERIES 2022A (ST. LUKE’S HOSPITAL OF DULUTH OBLIGATED GROUP)

4. APPROVAL OF CASH TRANSACTIONS

JUNE 1, 2021 TO JUNE 30, 2021

5. NEW BUSINESS

6. RESOLUTIONS FOR APPROVAL

RESOLUTION 21D-25: RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH MERGE, LLC FOR THE DEVELOPMENT OF THE URBANE DULUTH MULTI-FAMILY RESIDENTIAL PROJECT

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RESOLUTION 21D-29: RESOLUTION AUTHORIZING AGREEMENT WITH ELECTRIC SCIENTIFIC COMPANY FOR FIRE SUPPRESSION SYSTEM REWIRING AT THE MRO BUILDING IN AN AMOUNT NOT TO EXCEED \$74,800

7. DISCUSSION

DIRECTORS REPORT

8. ADJOURN

RESOLUTION 21D-25

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH MERGE, LLC FOR THE DEVELOPMENT OF THE URBANE DULUTH MULTI-FAMILY RESIDENTIAL PROJECT

WHEREAS, Merge, LLC (“Developer”), proposes to redevelop property located at the southwest corner of Superior Street and 20thth Avenue West in Duluth, Minnesota into a multi-family residential facility with apartment units and commercial space for lease (the “Project”);

WHEREAS, DEDA has determined that it is reasonable and necessary to provide certain financial assistance to Developer in order to facilitate Developer’s plans for the Project and to that end, DEDA and Developer have negotiated a Development Agreement for the Project; and

WHEREAS, DEDA has approved the establishment of Tax Increment Financing District No. 33, a Redevelopment District (the “TIF District”) pursuant to Minnesota Statutes §§469.174 to 469.1794, as amended; and

WHEREAS, pursuant the terms of the Development Agreement, DEDA proposes to provide certain tax increment financing assistance to Developer consisting of a pay-as-you-go tax increment revenue note (the “TIF Assistance”) payable from the TIF District; and

WHEREAS, the TIF Assistance constitutes a business subsidy within the meaning of Resolution 18-0515R of the City of Duluth (the “Business Subsidy Resolution”) and Minnesota Statutes §§116J.993 through 116J.995 (the “Business Subsidy Act”), and the Development Agreement constitutes a “business subsidy agreement” under the Business Subsidy Resolution and a subsidy agreement pursuant to the Business Subsidy Act; and

WHEREAS, pursuant to the Business Subsidy Act, after a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero; and

WHEREAS, DEDA on this same date held a duly noticed public hearing on the granting of a business subsidy to Developer pursuant to the Development Agreement and on setting the wage and job goals at zero in accordance with the Business Subsidy Act; and

NOW, THEREFORE, BE IT RESOLVED:

1. DEDA finds that the Development Agreement is in the best interests of the City and the welfare of its residents, and in accordance with the public

purposes and provisions of the applicable State and local laws and requirements under which the development will be undertaken.

2. DEDA hereby determines that the Project will enhance the economic diversity of the City and the City's tax base, enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas and stimulating the redevelopment of underutilized, blighted or obsolete land uses including demolition of commercial areas in the City and substandard structures, expand the City's tax base and realize a reasonable rate of return on the public investment; encourage the development of commercial areas in the City that result in higher quality development and private investment, and achieve development on a site which would not be developed without assistance.
3. DEDA hereby determines that the creation or retention of jobs is not a goal of the Project for purposes of the Business Subsidy Act, therefore, the wage and job goals may be and hereby are set at zero in the Development Agreement in accordance with the Business Subsidy Act.
4. DEDA hereby authorizes the proper DEDA officials to enter into a Development Agreement with Developer substantially in the form of that attached hereto (DEDA Contract No. 21-860-____), together with any related documents necessary in connection therewith.
5. DEDA staff, officials and consultants are authorized to implement the terms of the Development Agreement as provided therein and carry out DEDA's obligations under the Development Agreement.

Approved by the Duluth Economic Development Authority this 28th day of July 2021.

ATTEST:

Executive Director

STATEMENT OF PURPOSE:

This resolution authorizes a Development Agreement with Merge, LLC for the development of the Urbane Duluth project located at the southwest corner of Superior Street and 20th Avenue West. The project will be located on property currently occupied by the Esmond building, formerly known as the Seaway Hotel. The area is currently

designated as Tax Increment Financing District No. 33, a Redevelopment District: DEDA Resolution 20D-61 proposed the District and was approved on September 23, 2020, and the resolution approving the creation of TIF District No. 33 was approved by City Council on September 28, 2020.

The Development Agreement provides for the demolition of the existing, blighted structure and new development by Developer of a multi-family residential development with not less than 40 apartment units, the average rent for these set at a rate affordable to those earning an income at or below 80% of the area median income. The project includes street-level commercial space totaling approximately 8,500 square feet in size, at-grade parking stalls, together with related utilities, landscaping, and other amenities at a total development cost of approximately \$9,250,000. DEDA will provide 90% of the TIF generated by the project up to \$1,085,000 plus interest at the rate of 4% to pay for Eligible Costs on a pay-as-you-go basis. The term of the TIF Note is for a period of twenty-six (26) years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment, or until the principal and interest on the TIF Note has been paid in full, whichever is sooner.

Tax base impact statement: The current market value (2021, payable 2022) of the subject property located in TIF District 33 is \$354,300 and the property is generating \$0 in net tax capacity. After the improvements are completed, the taxable market value will increase to approximately \$5,345,760, After the TIF District is terminated, the development is anticipated to generate over \$69,940 per year in net tax capacity, based on the County Assessor's valuation of the completed property, not including inflation, the proceeds of which will be distributed to the taxing jurisdictions).

RESOLUTION 21D-26

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH SATURDAY ZENITH, LLC FOR THE DEVELOPMENT OF THE ZENITH HISTORIC OLD CENTRAL HIGH SCHOOL PROJECT

WHEREAS, Saturday Zenith, LLC (“Developer”), proposes to redevelop property located between Lake Avenue and First Avenue East and between Second Street and Third Street in Duluth, Minnesota into a multi-family residential facility with apartment units (the “Project”);

WHEREAS, DEDA has determined that it is reasonable and necessary to provide certain financial assistance to Developer in order to facilitate Developer’s plans for the Project and to that end, DEDA and Developer have negotiated a Development Agreement for the Project; and

WHEREAS, DEDA has approved the establishment of Tax Increment Financing District No. 34, a Redevelopment District (the “TIF District”) pursuant to Minnesota Statutes §§469.174 to 469.1794, as amended; and

WHEREAS, pursuant the terms of the Development Agreement, DEDA proposes to provide certain tax increment financing assistance to Developer consisting of a pay-as-you-go tax increment revenue note (the “TIF Assistance”) payable from the TIF District; and

WHEREAS, the TIF Assistance constitutes a business subsidy within the meaning of Resolution 18-0515R of the City of Duluth (the “Business Subsidy Resolution”), and the Development Agreement constitutes a “business subsidy agreement” under the Business Subsidy Resolution; and

WHEREAS, pursuant to Minnesota Statutes §§116J.993 through 116J.995 (the “Business Subsidy Act”), after a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero; and

WHEREAS, DEDA on this same date held a duly noticed public hearing on the granting of a business subsidy to Developer pursuant to the Development Agreement and on setting the wage and job goals at zero in accordance with the Business Subsidy Act; and

NOW, THEREFORE, BE IT RESOLVED:

1. DEDA finds that the Development Agreement is in the best interests of the City and the welfare of its residents, and in accordance with the public purposes and provisions of the applicable State and local laws and requirements under which the development will be undertaken.

2. DEDA hereby determines that the Project will enhance the economic diversity of the City and the City's tax base; enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas and stimulating the redevelopment of underutilized, blighted or obsolete land uses, expand the City's tax base and realize a reasonable rate of return on the public investment; encourage the development of housing and commercial areas in the City that result in higher quality development and private investment; and achieve redevelopment on a site which would not be redeveloped without assistance. DEDA hereby determines that the creation or retention of jobs is not a goal of the Project for purposes of the Business Subsidy Act. Therefore, the wage and job goals may be and hereby are set at zero in the Development Agreement in accordance with the Business Subsidy Act.
3. DEDA hereby authorizes the proper DEDA officials to enter into a Development Agreement with Developer substantially in the form of that attached hereto (DEDA Contract No. 21-860-____), together with any related documents necessary in connection therewith.
4. DEDA staff, officials and consultants are authorized and directed to implement the terms of the Development Agreement as provided therein and carry out DEDA's obligations under the Development Agreement.

Approved by the Duluth Economic Development Authority this 28th day of July 2021.

ATTEST:

Executive Director

STATEMENT OF PURPOSE:

This resolution authorizes a Development Agreement with Saturday Zenith, LLC for the development of the Zenith Historic Old Central High School project located between Lake Avenue and First Avenue East and between Second Street and Third Street in downtown Duluth. The project will be located in an area identified as Tax Increment Financing District No. 34, a Redevelopment District. A resolution approving the creation of TIF District No. 34 will be on the August 16, 2021, City Council agenda.

The Development Agreement provides for the acquisition of the property and redevelopment of the existing buildings by Developer resulting in approximately 125

apartment units and common areas. Of these apartment units, not less than 13 units will be available at 60% or less of the Area Median Income, as posted annually by the Minnesota Housing Finance Agency. The total development cost is estimated to be \$42,365,179. DEDA will provide up to \$2,940,000 of the TIF generated by this project plus interest at the rate of 3.25% to pay for public eligible costs of redevelopment on a pay-as-you-go basis. The term of the TIF Note is for a period of twenty six (26) years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment, or until the principle interest on the TIF Note has been paid in full, whichever is sooner; the note is projected to be paid in year 18.

Tax base impact statement: The current market value (2021, payable 2022) of the properties located in this 26-year Redevelopment TIF District (to be created by DEDA) is \$4,500,000 and the property is generating \$0 in net tax capacity. After the improvements are completed, the taxable market value will increase to approximately \$15,600,000 and the annual tax increment will be provided to the Developer to facilitate the redevelopment. After the TIF District is terminated, the development is anticipated to generate over \$195,000 per year in net tax capacity (based on the County Assessor's valuation of the completed property, not including inflation).

RESOLUTION 21D-27

**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 by other electronic means pursuant to Minnesota Statutes Section 13D.021, at or shortly after 5:15 p.m. on July 28, 2021, 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 Thomas Jovanovich:

N 31 FT OF S 60 FT OF LOTS 1 2 3 4 AND 4 ½, Block 189, WEST
DULUTH 7th DIVISION St. Louis County, Minnesota

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 28th day of July, 2021.

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 Hughes Olson Workshop as part of the Rebuild Duluth Program. Hughes Olson Workshop executed a Sale Agreement with DEDA in 2020 for property located in the Fairmount neighborhood, but due to boundary line issues, the project was rendered impossible at the previous site. That site will be returned to DEDA prior to conveyance of the subject property. Given the funding is secured and the contractor is ready to commence with the project, staff proposes use of this DEDA-owned site as a substitute.

Duluth Economic Development Authority

June 2021 Cash Activity - all DEDA Funds

ACCUMULATED TRANSACTION LISTING, G/L Date Range 6/01/21 - 6/30/21 (as of 07/14/21)

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
FUND 860 - OPERATING FUND				Beginning Balance	\$ 2,685,628.48
06/01/21	2021-0000028	GL	Cost Allocation - DEDA	(33,333.33)	Cost Allocation - DEDA
06/02/21	2021-00003580	RA	Pay Group O'Reilly LLC	450.20	Building Rent
06/07/21	2021-00003592	AP	Area Partnership for Economic Expan. (APEX)	(1,000.00)	Arrowhead Growth Alliance Annual Dues 2021
06/07/21	2021-00003592	AP	Matthew T Cartier	(35.00)	DEDA Meeting 5/26/21
06/07/21	2021-00003592	AP	Duluth News Tribune	(30.85)	DEDA Advertising 5/12/21
06/07/21	2021-00003592	AP	Zack Filipovich	(35.00)	DEDA Meeting 5/26/21
06/07/21	2021-00003592	AP	Ellie Ann Just	(35.00)	DEDA Meeting 4/28/21
06/07/21	2021-00003592	AP	Ellie Ann Just	(35.00)	DEDA Meeting 5/26/21
06/07/21	2021-00003592	AP	Timothy P McShane	(35.00)	DEDA Meeting 5/26/21
06/07/21	2021-00003592	AP	ChaQuana McEntyre	(35.00)	DEDA Meeting 5/26/21
06/07/21	2021-00003592	AP	Derek Medved	(35.00)	DEDA Meeting 5/26/21
06/07/21	2021-00003592	AP	Rozalind Randorf	(35.00)	DEDA Meeting 5/26/21
06/07/21	2021-00003592	AP	St Louis County Recorder	(138.00)	DEDA Resolutions/Agreements Docs 1414460-461-462
06/07/21	2021-00003592	AP	St Louis County Recorder	(258.00)	DEDA Resolutions/Agreement Docs 1040772-773-774
06/08/21	2021-00003708	GL	2021 Liability Insurance	(7,350.00)	2021 Liability Insurance
06/15/21	2021-00003923	RA	Interstate Parking	47,702.75	May 2021 Parking Revenue
06/15/21	2021-00003923	RA	Red Wagon Popcorn LLC	944.43	May 2021 Rent and Electrical Usage
06/16/21	2021-00003976	RA	Duluth Lincoln Park I LLC	396.00	Invoice #2021-00000132 Invoice #2021-00000133
06/16/21	2021-00003976	RA	Passport	1,511.05	Parking Revenue May 2021
06/21/21	2021-00003994	AP	Engineering Systems Inc.	(27,754.82)	Assessment and Review of the Pastoret Terrace
06/21/21	2021-00003994	AP	Hoisington Koegler Group, Inc.	(6,052.00)	21-860-100 Lot D Development Framework Scope of Work
06/21/21	2021-00003994	AP	City of Duluth Life Safety	(194.00)	Twin Ports Trailer Trash Invoice for Kozy pd by Life Safety
06/21/21	2021-00003994	AP	City of Duluth Life Safety	(2,227.50)	Dryco Invoice for Kozy pd by Life Safety
06/21/21	2021-00003994	AP	City of Duluth Life Safety	(1,042.50)	Dryco Invoice for Kozy pd by Life Safety
06/21/21	2021-00003994	AP	Baker Tilly Virchow Krause	(17,682.50)	PS to Facilitate Sale/Capital Upgrade of Duluth Paper Mill
06/30/21	2021-00004411	GL	Investment Earnings for June	1,391.00	Investment Earnings for June
FUND 860 - OPERATING FUND				Ending Balance: 6-30-2021	2,640,680.41 TB
FUND 861 - DEBT SERVICE				Beginning Balance	1,049.90
06/30/21	2021-00004411	GL	Investment Earnings for June	1.00	Investment Earnings for June
FUND 861 - DEBT SERVICE				Ending Balance: 6-30-2021	1,050.90 TB
FUND 865 - CAPITAL PROJECTS				Beginning Balance	4,087,081.81
06/30/21	2021-00004411	GL	Investment Earnings for June	2,135.00	Investment Earnings for June
FUND 865 - CAPITAL PROJECTS				Ending Balance: 6-30-2021	4,089,216.81 TB
FUND 866 - MRO FACILITY				Beginning Balance	740,856.96
06/07/21	2021-00003592	AP	Jamar Company	(305.00)	MRO Fire Alarm Call Out
06/07/21	2021-00003592	AP	Jamar Company	(7,725.00)	20 860 982 MRO Facility Maintenance - May 2021 Invoice
06/07/21	2021-00003592	AP	CenturyLink - Phoenix	(199.68)	Data Services May
06/07/21	2021-00003592	AP	Border States Electric Supply	(613.53)	Maintenance AAR/MRO Building
06/08/21	2021-00003708	GL	2021 Property and Boiler Insurance - MRO	(22,725.00)	2021 Property and Boiler Insurance - MRO
06/08/21	2021-00003708	GL	2020 Property Insurance Correction - MRO	(5,553.00)	2020 Property Insurance Correction - MRO
06/14/21	2021-00003880	RA	Lake Superior Helicopter	1,000.00	Invoice #2021-00000118
06/21/21	2021-00003994	AP	Duluth Public Utilities - Comfort Systems	(822.15)	335 W Superior St - Storm 4/30/21-5/27/21
06/21/21	2021-00003994	AP	Minnesota Power	(5,645.80)	5447119029 4/30/21-5/31/21
06/21/21	2021-00003994	AP	Jamar Company	(7,725.00)	20 860 982 MRO Facility Maintenance - April 2021 Invoice
06/21/21	2021-00003994	AP	Jamar Company	(7,725.00)	20 860 982 MRO Facility Maintenance - March 2021 Invoice
06/30/21	2021-00004411	GL	Investment Earnings for June	371.00	Investment Earnings for June
FUND 866 - MRO FACILITY				Ending Balance: 6-30-2021	683,188.80 TB
FUND 867 - STOREFRONT LOANS				Beginning Balance	258,016.13
06/08/21	2021-00003715	RA	North Shore Bank	662.49	Women in Construction May 2021 Payment
06/08/21	2021-00003715	RA	North Shore Bank	661.35	Women in Construction April 2021 Payment
06/08/21	2021-00003715	RA	North Shore Bank	663.88	Women in Construction March 2021 Payment
06/28/21	2021-00004308	RA	Alerus Financial	1,037.10	Old City Hall Payment Account #70003
06/30/21	2021-00004411	GL	Investment Earnings for June	136.00	Investment Earnings for June
FUND 867 - STOREFRONT LOANS				Ending Balance: 6-30-2021	261,176.95 TB

RESOLUTION 21D-25

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH MERGE, LLC FOR THE DEVELOPMENT OF THE URBANE DULUTH MULTI-FAMILY RESIDENTIAL PROJECT

WHEREAS, Merge, LLC (“Developer”), proposes to redevelop property located at the southwest corner of Superior Street and 20th Avenue West in Duluth, Minnesota into a multi-family residential facility with apartment units and commercial space for lease (the “Project”);

WHEREAS, DEDA has determined that it is reasonable and necessary to provide certain financial assistance to Developer in order to facilitate Developer’s plans for the Project and to that end, DEDA and Developer have negotiated a Development Agreement for the Project; and

WHEREAS, DEDA has approved the establishment of Tax Increment Financing District No. 33, a Redevelopment District (the “TIF District”) pursuant to Minnesota Statutes §§469.174 to 469.1794, as amended; and

WHEREAS, pursuant the terms of the Development Agreement, DEDA proposes to provide certain tax increment financing assistance to Developer consisting of a pay-as-you-go tax increment revenue note (the “TIF Assistance”) payable from the TIF District; and

WHEREAS, the TIF Assistance constitutes a business subsidy within the meaning of Resolution 18-0515R of the City of Duluth (the “Business Subsidy Resolution”) and Minnesota Statutes §§116J.993 through 116J.995 (the “Business Subsidy Act”), and the Development Agreement constitutes a “business subsidy agreement” under the Business Subsidy Resolution and a subsidy agreement pursuant to the Business Subsidy Act; and

WHEREAS, pursuant to the Business Subsidy Act, after a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero; and

WHEREAS, DEDA on this same date held a duly noticed public hearing on the granting of a business subsidy to Developer pursuant to the Development Agreement and on setting the wage and job goals at zero in accordance with the Business Subsidy Act; and

NOW, THEREFORE, BE IT RESOLVED:

1. DEDA finds that the Development Agreement is in the best interests of the City and the welfare of its residents, and in accordance with the public

purposes and provisions of the applicable State and local laws and requirements under which the development will be undertaken.

2. DEDA hereby determines that the Project will enhance the economic diversity of the City and the City's tax base, enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas and stimulating the redevelopment of underutilized, blighted or obsolete land uses including demolition of commercial areas in the City and substandard structures, expand the City's tax base and realize a reasonable rate of return on the public investment; encourage the development of commercial areas in the City that result in higher quality development and private investment, and achieve development on a site which would not be developed without assistance.
3. DEDA hereby determines that the creation or retention of jobs is not a goal of the Project for purposes of the Business Subsidy Act, therefore, the wage and job goals may be and hereby are set at zero in the Development Agreement in accordance with the Business Subsidy Act.
4. DEDA hereby authorizes the proper DEDA officials to enter into a Development Agreement with Developer substantially in the form of that attached hereto (DEDA Contract No. 21-860-____), together with any related documents necessary in connection therewith.
5. DEDA staff, officials and consultants are authorized to implement the terms of the Development Agreement as provided therein and carry out DEDA's obligations under the Development Agreement.

Approved by the Duluth Economic Development Authority this 28th day of July 2021.

ATTEST:

Executive Director

STATEMENT OF PURPOSE:

This resolution authorizes a Development Agreement with Merge, LLC for the development of the Urbane Duluth project located at the southwest corner of Superior Street and 20th Avenue West. The project will be located on property currently occupied by the Esmond building, formerly known as the Seaway Hotel. The area is currently

designated as Tax Increment Financing District No. 33, a Redevelopment District: DEDA Resolution 20D-61 proposed the District and was approved on September 23, 2020, and the resolution approving the creation of TIF District No. 33 was approved by City Council on September 28, 2020.

The Development Agreement provides for the demolition of the existing, blighted structure and new development by Developer of a multi-family residential development with not less than 40 apartment units, the average rent for these set at a rate affordable to those earning an income at or below 80% of the area median income. The project includes street-level commercial space totaling approximately 8,500 square feet in size, at-grade parking stalls, together with related utilities, landscaping, and other amenities at a total development cost of approximately \$9,250,000. DEDA will provide 90% of the TIF generated by the project up to \$1,085,000 plus interest at the rate of 4% to pay for Eligible Costs on a pay-as-you-go basis. The term of the TIF Note is for a period of twenty-six (26) years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment, or until the principal and interest on the TIF Note has been paid in full, whichever is sooner.

Tax base impact statement: The current market value (2021, payable 2022) of the subject property located in TIF District 33 is \$354,300 and the property is generating \$0 in net tax capacity. After the improvements are completed, the taxable market value will increase to approximately \$5,345,760, After the TIF District is terminated, the development is anticipated to generate over \$69,940 per year in net tax capacity, based on the County Assessor's valuation of the completed property, not including inflation, the proceeds of which will be distributed to the taxing jurisdictions).

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
MERGE, LLC
URBANE DULUTH PROJECT**

THIS AGREEMENT entered into this _____ day of _____, 2021, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and MERGE, LLC, D/B/A MERGE URBAN DEVELOPMENT GROUP, An Iowa limited liability company, hereinafter referred to as "Developer".

WHEREAS, Developer is acquiring certain Property, hereinafter described, and the buildings located thereon, which Property is located at the southeast corner of Superior Street and 19th Avenue West and has proposed to develop the Project as hereinafter described which includes the construction on said Property of not less than 40 apartment units, the average rent for these units set at a rate affordable to those earning an income at or below 80% of the area median income as determined by the Minnesota Housing and Finance Agency, and commercial space on the street level; and

WHEREAS, Developer has requested assistance from DEDA for site preparation and infrastructure costs and other costs eligible for public financing related to the redevelopment of said Property and the development of said Project as is hereinafter set forth since, without such assistance, the Project would not be economically viable; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the wellbeing and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the development of the Project; and

WHEREAS, after careful analysis of the projected costs of the Project and of the financial resources available and economic feasibility of such funding to pay for the costs of the Project described herein, DEDA has determined that:

- A. a "gap" exists between the cost to Developer of the Project and the funds presently available to or known to Developer and DEDA to be available to finance those costs at rates that would make the Project economically feasible as hereafter described, which gap, based on the best currently-available estimates, is at least \$1,085,000;
- B. without the tax increment assistance to be provided pursuant to this Agreement, the cost of developing the Project would be more than can be supported by the amounts that are affordable to be charged for the rental and the available resources would be inadequate to fund the development of said Project on a financially feasible basis and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future; and
- C. the increased market value of the Property that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the Project after subtracting the present value of the projected tax increment for the duration of this Agreement.

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to stimulate the redevelopment of underutilized, blighted or obsolete land uses including demolition of substandard structures, to encourage the development of residential rental housing, especially low and moderate income housing, in an area of the city that is in dire need of such housing, to achieve development on property which would not be redeveloped without assistance, to provide updated, smaller scale commercial space, and to enhance and diversify the tax base of the City of Duluth; and

WHEREAS, the Property is located in a redevelopment district within the meaning of Minnesota Statutes §469.174 et. seq. (Tax Increment Financing District No.33).

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:

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Available Tax Increment means 90% of the Captured Tax Increment in the six (6) month period preceding each Scheduled Payment Date, as defined in the TIF Note.
- B. Certificate of Completion: means a written certification executed by the Director in recordable form certifying that the construction of the Project in conformance with the Plans has been totally completed.
- C. Captured Tax Increment: means all real estate taxes resulting solely from the payment of real estate taxes on the Captured Net Tax Capacity, as defined in Minnesota Statutes Section 469.174, Subd. 4, of the Property resulting from the Project remitted to DEDA by the St. Louis County Auditor and received by DEDA.
- D. City means the City of Duluth.
- E. Developer: shall mean Merge LLC, D/B/A Merge Urban Development Group and any affiliate of Merge LLC formed to own the Property and develop the Project that is controlled by the principals of Merge LLC,
- F. Director means the Executive Director of DEDA or such person or persons designated in writing by said Director to act on behalf of him/her with regard to this Agreement or any portion thereof.
- G. Eligible Project Costs means those Project Costs set forth in Exhibit A which may be legally funded with tax increment proceeds under Minnesota Statutes §469.174 et. seq. and case law.

- H. Plans: means the plans, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations for the Project as approved pursuant to Article IV below.
- I. Project means the development on the Property by Developer, including site preparation, of not less than 40 residential apartment units, all of which will be available on average for rent to persons having an income at or below 80% of the area median income at rental rates determined by the United States Department of Housing and Urban Development to be affordable to such persons, and street-level commercial space totaling approximately 41,500 square feet in size, at-grade parking stalls, together with related utilities, landscaping and other amenities, all at a cost of not less than \$9,250,000, and all according to the plans approved by the Director pursuant to Article IV and pursuant to required City approvals.
- J. Project Costs: shall mean the sum of the Eligible Project Costs and in addition those costs of the Project described in Exhibit B attached hereto and made a part hereof.
- K. Property means that Property located in St. Louis County, Minnesota, described on Exhibit C attached hereto and made a part hereof.
- L. TIF Act means Minnesota Statutes, Sections 469.174 through 469.179, as the same may be amended from time to time.
- M. TIF District No. 33 means DEDA's Tax Increment Financing District No.33.
- N. TIF Note means a limited revenue tax increment financing note ("pay-as-you-go" note) to be issued by DEDA to the Developer pursuant to Article VIII of this Agreement in substantially the form of that attached hereto as Exhibit D.
- O. TIF Plan means the Tax Increment Financing Plan for TIF District No. 33 authorized in accordance with the TIF Act, which TIF Plan is on file in the office of the Director.

ARTICLE II

Application Fee and Reimbursement of Consultant Costs

In consideration of the financial assistance provided by DEDA to Developer pursuant to the terms of this Agreement, Developer has paid to DEDA a non-refundable application fee of Three Thousand and No/100 Dollars (\$3,000.00). Additionally, Developer agrees to reimburse DEDA within thirty (30) days of transmission of an invoice by DEDA to Developer for services of Ehlers & Associates, Inc. to perform a “but for compliance test” for the Project in an amount estimated not to exceed Twenty Thousand Dollars (\$20,000).

ARTICLE III

Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to the Director the following items:

- A. Title. Proof reasonably satisfactory to the Director that Developer owns the Property in fee simple.
- B. Construction Costs. Developer’s certified estimate of the total cost of construction of the Project.
- C. Construction Contract. A copy of the executed contract or contracts between Developer and one or more contractors necessary to complete the demolition of the structures on the Property and the construction of the Project in accordance with Plans approved pursuant to Article IV. Such contract(s) shall provide that payments for the work thereunder are the sole obligation of Developer. Such contract(s) shall include the requirement that said contractor(s) agree to enter into a Project Labor Agreement conforming to the requirements of Article IV of Chapter 2 of the Duluth City Code, 1959, as amended and to conform to the Community Benefits Requirements as set forth in Exhibit E, attached hereto and made a part hereof and that the laborers, mechanics or apprentice-trainees employed in the construction of the Project to be paid at wage rates equal to or

greater than those required pursuant to the federal Davis Bacon Act, as amended and regulations related thereto. All payrolls for the construction trades performing work on the Project must be submitted to the Director on a monthly basis. Said contract shall further require such contractor to comply with all applicable federal, state and local laws, ordinances and regulation including but not limited to the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).

- D. Construction Financing. Copies of loan commitments and other financing commitments obtained by Developer for the Project, the total of said commitments and any equity contribution commitment by Developer totaling an amount not less than the total contract prices between Developer and the contractor(s) as described in Paragraph C above.
- E. Survey. A survey of the Property performed by a Registered Land Surveyor under the laws of the State of Minnesota.

ARTICLE IV

Project Plans

- A. Plans, Specifications and Elevations. No less than thirty (30) days prior to the commencement of construction of the Project, or such lesser time as approved by the Director, Developer shall submit the Plans for the Project to the Director for approval. Developer shall be solely responsible for the cost of developing and producing all plans and specifications for the Project and for any modifications thereto. All such Plans shall be in conformance with this Agreement, with the schematic design previously submitted to the Director which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. The Director shall review the Plans within fifteen (15) days of submission of the Plans by Developer. The Director's approval or rejection shall be provided to the Developer in writing. If the Director rejects the Plans in whole or in part as not being in compliance with the foregoing

requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected Plans meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected Plans herein provided for with respect to the originally submitted Plans shall continue to apply until said Plans have been approved in writing by the Director. The Director's approval of Developer's Plans shall not constitute a guaranty that the Plans conform to the requirements of applicable building, zoning or other codes or ordinances or constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with the Plans and any revisions thereto.

- B. Changes after Initial Approval. Any material or substantial changes made to Plans by Developer after initial review of the Director shall be submitted to the Director for approval in the same manner provided for in Paragraph A above.

ARTICLE V

Construction

- A. Construction. Upon the fulfillment of the preconditions to construction provided for in Articles III, and I above, but in no event later than June 1, 2022 (but subject to unavoidable delays as detailed in Article XXIV below), Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article IV. Said construction work shall be completed not later than December 31, 2023 (subject to unavoidable delays as detailed in Article XXIV below). Notwithstanding the above, the construction period may be extended for up to ninety (90) days in addition to delays permitted pursuant to Article XXIV below upon the prior written approval of the Director.
- B. Developer to Bear All Costs. Except for payments by DEDA provided for in Article VI, Developer specifically agrees to bear all costs related to the construction of the Project and any modifications thereto.

- C. Progress Reports. Until construction of the entire Project, Developer shall make reports in such detail and at such times as may reasonably be requested by the Director as to the actual progress of Developer with respect to the Project. Additionally, upon reasonable notice, the Developer also agrees that it will permit DEDA access to the Property and will allow representatives of the Director to inspect the progress of the work.
- D. Project Costs/Certificate of Completion. Promptly upon completion by Developer of the construction of the Project, Developer shall submit to the Director written evidence in a form satisfactory to the Director of Eligible Project Costs incurred and paid. Such evidence shall include, at a minimum, paid invoices, receipts, canceled checks, mechanic lien waivers or comparable evidence of payment of at least the amount of the Construction Contract and any other eligible Project costs claimed by Developer. DEDA and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Eligible Project Costs and the Project. Such records shall be kept and maintained by Developer for a period of six (6) years following the issuance of the Certificate of Completion. Upon furnishing by Developer of said written evidence satisfactory to the Director of such costs and of completion by Developer of the construction of the Project in accordance with this Agreement, and upon written request from Developer, the Director will furnish to Developer a Certificate of Completion in the form of that attached hereto as Exhibit G so certifying. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction obligations of Developer undertaken pursuant to this Agreement and may be recorded against the Property.

ARTICLE VI

TIF Payment Obligations

- A. Upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article V and the submission of the audit provided for in Paragraph B below,

DEDA shall execute and deliver to Developer a Note in substantially the form of Exhibit D. The principal amount of the TIF Note shall be \$1,085,000 or the amount of documented Eligible Project Costs, whichever is less; provided that in the event that the Project Costs is less than \$9,250,000, the amount of the TIF Note will be further reduced by an amount equal to one-half (1/2) of the difference between \$9,250,000 and the amount of the Project Costs determined in the manner set forth in Paragraph B below.

- B. Upon completion of the construction of the Project, Developer shall cause an audit of the Project Costs to be prepared by a certified public accountant and submitted to DEDA. The results of the audit shall be subject to review and approval of the Director for conformance to the requirements of this Agreement. The Developer may select the certified public accountant to perform the audit but that person or entity shall be subject to the prior approval of the Director in writing.
- C. Pursuant to the TIF Plan, DEDA's first receipt of Available Tax Increment will be in 2023. Interest payable on the TIF Note(s) in the amount of 4% per annum shall start to accrue on the date of execution of the TIF Note. 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 and paid by the Developer.
- D. Developer acknowledges and agrees, as provided in the TIF Note, that payments under the TIF Note shall be bi-annual payments in the amount of the Available Tax Increment attributed to Property received by DEDA in the six months preceding each Scheduled Payment Date as defined in the TIF Note. There shall be no interest on unpaid interest as it accrues. DEDA shall not be obligated to make any payments except as provided in the TIF Note.
- E. The TIF Note(s) will be issued without registration under the State or federal securities laws pursuant to an exemption for such issuance; and, accordingly, the TIF Note(s) may not be assigned, transferred or pledged, in whole or in part, except as specifically set forth herein. Notwithstanding the foregoing, the Director shall at all times maintain a register setting forth the current holder of the

Note(s) which shall be determinative of the identity holder and to whom payments on the Note(s) are to be made.

- F. DEDA's financial commitment for payment of the TIF Note under this Agreement is a revenue obligation only and will be paid by DEDA only out of Available Tax Increment actually received by DEDA. Developer acknowledges that DEDA makes no representations or warranties that the Available Tax Increment will be sufficient to pay Developer all amounts due and payable pursuant to TIF Note. Developer acknowledges that Available Tax Increment is subject to calculation by St. Louis County and changes in state statute and that some or all of the amount of the TIF Note may not be paid and in such event, the amount of payments otherwise due to Developer under Paragraph A above shall be deemed, upon termination of this Agreement, to have been paid in full and DEDA shall have no further obligations for payments of said amounts.
- G. Developer acknowledges that the estimates of Available Tax Increment and tax projections, which may have been made by DEDA or its agents, officers or employees are estimates only, are made for the sole use and benefit of DEDA and are not intended for Developer's reliance. DEDA does not warrant that it will have throughout the term of this Agreement the continuing legal ability under State law to apply Available Tax Increment to the payment of the TIF Note.
- H. Notwithstanding anything to the contrary in this Agreement, the TIF Note may be assigned, transferred or pledged without the approval of DEDA; provided that any assignment, transfer or pledge of the Note(s) shall be made in accordance with the requirements set forth in the Note(s) and with Paragraph E above.

ARTICLE VII

Operating Covenants

Developer agrees that in its operations and use of the Property and the Project during the term of this Agreement, in accordance with industry standards, Developer shall:

- A. Maintenance. At all times cause the Project and the Property to be operated and maintained in a neat, orderly condition, to maintain and preserve and keep in

good repair, working order and condition said Property and Project and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Project and the Property shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all roofing systems as well as outside maintenance including snow removal, grass cutting and landscape maintenance, parking ramp cleaning, repair and striping and all other exterior maintenance to said Property and the Project.

- B. Rental Restriction: Developer agrees and commits that, during the Term of this Agreement as set forth in Article XV below that the average rents for all apartment units in the Project will be rented to persons or families whose income is equal to or less than eighty (80%) percent of the area median income at rental rates determined to be affordable to such persons annually by the United States Department of Housing and Urban Development.
- C. Utilities. Unless currently and validly disputed, pay or cause to be paid any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.
- D. Licenses and Permits. Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Project and the Property and to be qualified to do business in the State of Minnesota.
- E. Obey All Laws. Conduct its affairs and carry on its business and operations with respect to the Project and the Property in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota including all laws related to unlawful discrimination and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Project and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity

thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Project and the Property.

- F. Payment of Taxes. Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Project or the Property, subject to the right to contest in good faith in accordance with Minnesota law.
- G. Assessment Fees and Charges. Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Project and the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Project and the Property and all other charges lawfully made by any governmental body for public improvements.
- H. Obligations and Claims. Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.
- I. Living Wage. Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance") and to require those construction workers directly employed in the construction of the Project to be paid Prevailing Wage Rates as that term is defined in Section 2-25 of the Duluth City Code.

ARTICLE VIII

Provision against Liens, Assignments and Transfers

- A. Provision against Liens. Except for encumbrances permitted pursuant to this Article, the Developer shall not create or permit any mortgage or encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project and the Property or any part thereof which would materially or adversely affect DEDA's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify DEDA of its

intention to do so and post such security as DEDA reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

Notwithstanding the above, encumbrances in the nature of easements, licenses or the like, but not to include mechanic's or materialmen's lien, may be created or permitted after the issuance of a Certificate of Completion without the approval of DEDA.

- B. Transfers prior to Issuance of a Certificate of Completion. The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Project and the Property. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the issuance of a Certificate of Completion, Developer represents and agrees 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, 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, the Project, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of DEDA.
- C. Permitted Encumbrances. Notwithstanding anything in this Article to the contrary, Developer is authorized, without the approval of DEDA, to obtain construction and permanent financing for the Project and to mortgage the Project and Property to provide security for the construction and permanent financing. In addition, Developer is authorized to lease the apartment units to tenants at all times without the approval of DEDA.

D. Transfers after Issuance of a Certificate of Completion.

Following the issuance of a Certificate of Completion, Developer may sell, convey or otherwise transfer the Property or any tract or parcel thereof with the prior written consent of DEDA, which consent shall not be unreasonably withheld, provided the following has been satisfied:

1. Thirty days' prior written notice of the transfer is provided to the Director.
2. The transferee shall agree by affidavit to comply with all the terms and conditions of this Agreement not otherwise extinguished by the completion and Certification of Construction of the Project. The affidavit shall comply with the terms of this Paragraph 2 and shall be provided to the Director.
3. Notwithstanding the above transfer, the payment of the tax increment pursuant to Article VII shall be made to the registered owner of the Note(s) as provided for in Paragraph E of Article VI above.

Failure to comply with the requirement of subsection 1 and 2 above shall be an event of default under this Agreement.

E. Modification; Subordination. In the event any portion of the Developer's funds is provided through mortgage financing, subject to the following, DEDA agrees to subordinate its rights under this Agreement to the holder of any mortgage securing construction or permanent financing, in accordance with the terms of a subordination agreement in a form reasonably acceptable to DEDA and such holder. Provided, however, that the form of any such subordination shall specifically require that in the event that the holder of any such mortgage and/or any successor in interest thereto becomes the owner of the Property, such holder or successor in interest shall continue to operate the Project in a manner required by Paragraph B of Article VII above.

ARTICLE IX

Indemnification

A. Generally. During the Term of this Agreement, Developer shall, to the fullest extent permitted by law, protect, indemnify and save DEDA and the City and their officers, agents, servants, employees and any person who controls DEDA within

the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and also, without limitation, the construction or installation of the Project or any portion of the Project. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project or the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or
4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification. In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and 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 reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing in the Project or on the Property, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly

promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or on the Property, or the release or threatened release 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 persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs 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 such conditions existing in the Project or on the Property.

- C. Indemnification Procedures. Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA or the City under this Article, DEDA shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA or the City with respect to which indemnity may be sought against Developer, DEDA and the City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Developer.
- D. Exceptions to Indemnification. In no event shall Developer be required to indemnify DEDA or the City under this Article for liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims, demands and judgments of any nature arising solely from the negligent or intentional misconduct of DEDA or the City or their officers, agents, servants, employees. Developer shall not be obligated to indemnify DEDA or City under

the terms of this Article for any settlement made by them without the prior written consent of Developer.

ARTICLE X

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following:

- A. **Insurance during Construction.** Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:
 1. **Property Insurance.** Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project and the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force.
 2. **Public Liability Insurance.** Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Insurance and Automobile Liability Insurance Form with "Broad Form" property

damage liability coverage, with XCU exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds on the Commercial General Liability Insurance and Automobile Liability Insurance policies. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions;
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers' liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance. Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the Project and the Property, carried in the name of Developer as follows:

1. Property Insurance. Prior to expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$50,000 per occurrence. For the purposes hereof, "all risk" means insurance

equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer and DEDA hereby mutually waive any and all claims or causes of action against the other party for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss.

2. Liability Insurance. During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds therein. Insurance shall cover:

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

3. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA. Employees' liability insurance shall be carried in limits of \$100,000 per employee.

C. Modification of Insurance Requirements. It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in

Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect.

- D. Requirements for All Insurance. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.
- E. Certifications. Developer shall be required to supply to DEDA written certifications of insurance requiring the insurer to give DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance for any reason other than non-payment of premium and ten (10) days' written notice prior to cancellation for non-payment of premium of said insurance.
- F. Reconstruction Obligation and Uninsured Loss. In the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, or construct improvements in a manner which is approved by DEDA, such approval which shall not be unreasonably withheld, and to the extent necessary to accomplish such repair, reconstruction, restoration, or construction, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction. Provided, however, nothing to the contrary of the foregoing withstanding, if Developer reimburses DEDA for all tax increment proceeds paid by DEDA to

Developer from the effective date of this Agreement to the most recent such payment so paid by DEDA, Developer shall be released from reconstruction obligations of this Paragraph.

- G. Reconstruction Obligation Contingency Nothing to the contrary in Paragraph F above, in the event that the Project is substantially or totally destroyed and the parties agree in good faith that under present economic or social conditions the Project is no longer economically viable or does not constitute the highest and best use of the Property, the parties hereby commit to meet and confer in good faith to determine the use of the Property which will be of greatest economic, social and practical use to the Developer, to the City, to DEDA and to the Lincoln Park business district and use their best efforts to negotiate an amendment of this Agreement to implement that use and to apply the proceeds of any insurance to implementation of that use.

ARTICLE XI

Defaults and Remedies Therefor

- A. Developer's Default. The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Section B below shall be applicable.
1. Developer shall fail to pay real estate taxes as and when due and payable.
 2. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.

3. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Project or the Property or Developer loses title to the Project or the Property or both.
4. Developer 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 is made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similar action under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within one hundred eighty (180) 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 Developer's properties or fails to have dismissed or vacated within one hundred eighty (180) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

B. DEDA's Remedies for Developer's Defaults. DEDA shall have the following remedies in the event of a default:

1. Terminate this Agreement and the TIF Note.
2. Withhold the performance of any obligation owed by DEDA under this Agreement or the TIF Note or both.
3. Seek and be entitled to monetary damages for any damages incurred by DEDA as a result of a default.
4. Cease making payments under this Agreement and the TIF Note of Available Tax Increment as defined in the TIF Note.
5. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.

6. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.
- C. Non-Waiver. The waiver by DEDA of any default on the part of Developer or the failure of DEDA to declare default on the part of Developer 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 Developer of the same or of any other obligation of Developer under this Agreement. To be effective, any waiver of any default by Developer hereunder must be in writing by the Director.
- D. Default by DEDA. The failure of DEDA to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an event of default by DEDA. Whenever an event of default occurs by DEDA, Developer shall be entitled to all remedies available at law or equity, and Developer may take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
- E. Remedies Cumulative. The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- F. Attorneys' Fees. In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XII

Representations by DEDA

DEDA makes the following representations as the basis for the undertaking on its part herein contained:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any federal, state, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA will perform all of its obligations under this Agreement.
- D. Based on reasonable knowledge and belief, DEDA believes that the Project contemplated by this Agreement is in conformance with the development objectives set forth in the TIF Plan.
- E. As of the execution of this Agreement, the City and DEDA have approved the TIF Plan in accordance with the requirements of the TIF Act.

ARTICLE XIII

Developer's Representations and Warranties

Developer represents and warrants that:

- A. The Developer is an Iowa limited liability company duly organized and authorized to transact business in the State, it is fully competent to acquire the Property and to construct the Project thereon, it is not in violation of any provisions of its articles of organization, member control agreement, or the laws of the State, it has the power to enter into this Agreement, and has duly authorized the

execution, delivery and performance of this Agreement by proper action of its members.

- B. Developer will perform all of its obligations under this Agreement. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of the terms, conditions, or provisions of any agreement or instrument of whatever nature to which the Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.
- C. No actions, suits, or proceedings for which Developer has been served process are pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any federal, state, or municipal or other governmental agency that, if decided adversely to Developer, would have a material adverse effect upon Developer, the Property, or the Project, and Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Property or the Project.
- D. The Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and federal Davis-Bacon). The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.
- E. Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this

Agreement delivered to DEDA or any third party under this Agreement to be true, correct, and complete in all material respects.

- I. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental and the available resources would be inadequate and not economically feasible to construct the Project and that, therefore, but for the DEDA assistance to be provided for hereunder, the Project would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

ARTICLE XIV

Term

The term of this Agreement shall commence on the date first shown above and shall continue for a period of 20 years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment or when the TIF Note has been paid off, terminates or matures unless this Agreement is otherwise terminated as provided for herein. Termination shall not terminate any indemnification provisions or any other provisions which by their nature survive termination and shall not terminate any other rights or remedies arising under this Agreement due to any event of default which occurred prior to such termination.

ARTICLE XV

Agreement Personal to Parties

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to the extent assignment is permitted hereunder. This Agreement shall run with the land during the Term of this Agreement as set forth in Article XIV above. Following the end of the Term of this Agreement, the City and DEDA, at Developer's request and expense, execute such documents reasonably

requested by Developer to evidence the termination of this Agreement as an agreement running with the land.

ARTICLE XVI

Notices

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

In the case of DEDA: DEDA
 Room 402 City Hall
 411 West First Street
 Duluth, MN 55802
 Attn: Executive Director

In the case of Developer: MERGE, LLC
 604 Clay Street
 Cedar Falls, Iowa 50613
 Attn: Brent Dahlstrom

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section.

ARTICLE XVII

Recordation

Immediately upon their execution, Developer agrees to record this Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA executed original copies of the Agreement showing the date and document numbers of record, or certified copies of the filed original documents.

ARTICLE XVIII

Disclaimer of Relationships

Developer acknowledges that nothing contained in this Agreement nor any act by the City, DEDA or the Developer shall be deemed or construed by Developer or by any

third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between DEDA, Developer and/or any third party.

ARTICLE XIX

Applicable Law

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

ARTICLE XX

Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

ARTICLE XXI

Authorization to Execute Agreement

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

ARTICLE XXII

Title of Articles

Any title, Articles and Sections in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE XXIII

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.

ARTICLE XXIV

Unavoidable Delays

Neither party shall be held responsible for, and neither party shall be in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, labor disputes, pandemics or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

ARTICLE XXV

Entire Agreement

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

Urbane Duluth Redevelopment Project

Exhibit A- Eligible Costs

- Acquisition of adjacent parcel
- Clean-up & demolition
- Site Prep, Utilities, Geopiers/foundation work
- Parking Facilities
- Other TIF eligible expenses

Urbane Duluth Redevelopment Project

Exhibit B- Project Costs

01 - General Conditions \$ 920,000
02 - Existing Conditions
03 - Concrete \$ 510,000
04 - Masonry \$ 420,000
05 - Metals \$ 320,000
06 - Wood \$ 980,000
07 - Thermal and Moisture Protection \$ 630,000
08 - Openings \$ 650,000
09 - Finishes \$ 830,000
10 - Specialties \$ 35,000
11 - Equipment \$ 145,000
12 - Furnishings \$ 290,000
13 - Special Construction
14 - Conveying Equipment \$ 114,000
21 - Fire Suppression \$ 130,000
22 - Plumbing \$ 155,000
23 - HVAC \$ 1,180,000
26 - Electrical \$ 655,000
27 - Communications \$ 90,000
28 - Electronic Safety and Security
31 - Earthwork \$ 49,500
32 - Exterior Improvements \$ 175,000
33 - Utilities
330000 Utilities (general) \$ 300,000
Construction Cost Subtotal \$ 8,578,500
Contingency
Overhead and Profit \$ 278,801
TOTAL CONSTRUCTION COST \$ 8,857,301
Hard Costs \$ 8,857,301
Soft Costs \$ 414,901
Development Fee \$ 365,112
Interest and Loan Fees \$ 273,389.29

Total Project Costs: \$ 9,910,703

Urbane Duluth Redevelopment Project

Exhibit C- Property Description

Lots 321 and 323, Block 53, Duluth Proper Second Division, St. Louis County,
Minnesota

Urbane Duluth Redevelopment Project

Exhibit D- TIF Note

Principal Amount	Annual Rate
\$1,085,000	4.00%

UNITED STATES OF AMERICA

STATE OF MINNESOTA

COUNTY OF ST. LOUIS

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

TAX INCREMENT FINANCING (TIF) REVENUE NOTE

(URBANE DULUTH REDEVELOPMENT)

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 MERGE, LLC, D/B/A MERGE URBAN DEVELOPMENT GROUP, An Iowa limited liability company (the “Developer”), or its registered assigns (the “Registered Owner”), the principal amount of \$_____ and ____/100th Dollars (\$_____), which is the amount determined in Paragraph A of Article VIII of that certain Development Agreement between DEDA and the Developer dated _____, 2021, and bearing DEDA Contract No. _____, 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. The principal amount of this TIF Note, as adjusted above, shall bear interest at the annual rate specified above and interest shall start to accrue as of the date of execution of this TIF Note. 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 on August 1, 2023, to and including February 1, 2049, 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, 2049; (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 §§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

Urbane Duluth Redevelopment Project
Exhibit E- Community Benefits Requirements

**Memorandum of Understanding
Regarding The
COMMUNITY BENEFITS PROGRAM**

As it applies to the _____ Project

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this ____ day of _____, 20__ between the City of Duluth through its Workforce Development Department, (the “City”), _____, (the “Developer”), and _____, (the “Contractor”) for the purpose of memorializing the commitments between the parties to implement the City’s Community Benefits Program (the “Program”) as hereinafter set forth in conjunction with the construction of the _____ Project. The Developer is the developer of the Project and the Contractor is a contractor under contract with the Developer to perform work on the Project. The [(City)(Duluth Economic Development Authority (“DEDA”))] is providing financial assistance to the Project.

The City has determined that it is critical to the economic vitality of the City and its citizens that construction projects receiving City or DEDA support commit to assisting in developing a diverse, trained and skilled workforce. In acknowledgement of this goal, the City, the Developer, and the Contractor agree to use their best efforts to implement the Program as hereinafter set forth in this MOU and to cooperate fully with the City’s Workforce Development Department to so implement the Program. Further Contractor agrees to require any subcontractor of Contractor working on the Project covered by this MOU to so use their best efforts to implement the Program.

I. Definitions

For the purposes of this MOU, the following terms shall have the meanings hereinafter ascribed to them:

- A. Best Efforts: shall mean such efforts as are reasonable in light of the Contractor's ability and the means at its disposal.
- B. Best Efforts Plan: shall mean a plan developed and approved between the Contractor and the Workforce Development Department to implement the Contractor's Best Efforts obligations under this MOU.
- C. Contractor: shall mean the Contractor named above performing work on the Project, and all of its Subcontractors.
- D. Eligible Workers: shall refer to women, people of color, and other individuals who are considered socially disadvantaged, and whose work hours on the Project shall count toward the Community Benefits Goal outlined in this MOU. An individual who falls within one or more of the following federally protected classes or who has one or more of the following characteristics shall be considered an Eligible Worker:

Federally protected classes:

- Woman;
- Person of color;
- Has a disability;
- Veteran.

Other Eligible Worker Characteristics:

- Is currently homeless;
- Has received public assistance of any kind within the last 12 months;
- Has a criminal record of conviction;
- Is currently in, or has been emancipated from, the public foster care system;
- Is a disadvantaged or at-risk youth, as defined by the Workforce Investment and Opportunity Act (WIOA), between the ages of 18 and 24;
- Has a disability, including disabled veterans;
- Has a household income below 200% of Federal Poverty Level.

- E. Program: shall mean the Community Benefits Program as set forth in this MOU.

- F. Project: shall mean the construction of the _____ Project as approved by the [(City)(Duluth Economic Development Authority)] by its Resolution No. _____ on _____, 20__.
- G. Subcontractors: shall mean all subcontractors of Contractor of whatever tier engaged in on-site work on the Project covered by this Agreement.
- H. Work Hours: shall mean the total number of hours of construction trade work performed on the Project by Eligible Workers, which work is of a type or character commonly performed by members of labor unions which are affiliated with the Duluth Building and Construction Trades Council or similar regional Councils within Minnesota.

II PROGRAM GOALS

All Contractors entering into contracts for the Project will use their best efforts, as described below, in the performance of those contracts to attain the following Program goals:

A. Eligible Worker - General:

For the Project, the Contractor shall use its best efforts to cause fifteen percent (15%) of total hours of work performed with respect to the Project to be Work Hours performed by Eligible Workers.

B. Women

One-half of Work Hours as defined herein shall be performed by Eligible Workers who are women.

III DEVELOPER AND CONTRACTOR—BEST EFFORT

A. Plan

Within Thirty (30) days of the date the Contractor executes a contract for the Project or prior to commencement of work on the Project by the Contractor, whichever is earlier, Contractor shall have agreed with the Workforce Development Department to a Best Efforts Plan for achieving the Program Goals set forth in Section II above for the construction of the Project. The Contractor shall not commence construction of the Project unless the required Best Efforts Plan has been approved by the Workforce Development Department. The Best Efforts Plan shall include ongoing

effect lasting beyond Project completion. The Best Efforts Plan may include but shall not be limited to the following commitments by the Contractor:

1. To participate in local job fairs and hiring events, including those at high schools, those organized by CareerForce and other partner organizations, , and those organized by community and technical colleges.
2. To proactively work with the Workforce Development Department and partner organizations it has identified, as well as with unions with which the Contractor has agreements, to sponsor new Eligible Workers into such union's apprenticeship programs.
3. To proactively work with CareerForce, Native American tribes and appropriate community organizations to recruit and retain Eligible Workers.
4. To support and actively participate in local apprenticeship exploration programs and other construction career training opportunities.
5. To actively participate in the Duluth Workforce Development Board's Construction Working Group, and in its various initiatives to expand the involvement of Eligible Workers in our region's construction workforce.
6. To develop and implement efforts to retain and support advancement of Eligible Workers in the Contractor's company.
7. To develop and implement company policies and processes to facilitate reporting and resolution of discrimination, harassment, or bias complaints.
8. To require the Contractor's Subcontractors to join with and cooperate fully with Contractor in the implementation of the Contractor's Best Efforts Plan.
9. To take such other actions as is reasonably agreed between Contactor and the Workforce Development Department that will encourage participation of Eligible Workers in the construction of Project, while not adding cost to the Project.
10. To take, and to require its Subcontractors to take, appropriate corrective action when notified by the Workforce Development Department that its Program efforts have failed to meet the Best Efforts requirements of the Program.

B. Reporting

1. Monthly Reporting

No later than Thirty (30) days following the end of the month in which Work Hours are performed on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project in the prior month, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. In determining the identity of Eligible Workers, Contractors and Subcontractors may use then-current lists of Eligible Workers certified by the Workforce Development Department or self-attestation forms signed by Eligible Workers collected by the Contractor or Subcontractor and provided to the Workforce Development Department, or a combination thereof.

2. Completion Report

No later than Sixty (60) days following the end of completion of construction on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project from commencement of construction to its completion, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. Eligible Workers shall be certified as provided for in subparagraph 1 of Paragraph B above. In addition, if the Completion Report establishes that the Program Goals have not been met, the Completion Report shall set forth in detail all efforts actually effectuated to implement the Best Efforts Plan and may set forth any

explanations or extenuating circumstances for not having met the Program Goals.

IV. CITY-PROGRAM OBLIGATIONS

As they pertain to the implementation of the Program, the City, through its Workforce Development Department, shall:

- A. Work with and assist Contractor and all Subcontractors in developing the Best Efforts Plan for the Project covered by this Agreement.
- B. Promptly review and approve the Best Efforts Plan as and when appropriate.
- C. Actively recruit potential Eligible Workers to enter into the building and construction trades and to participate in educational and training programs aimed at making them employable in said trades.
- D. Work with and collaborate with educational institutions, community partners and apprenticeship programs to build accessible pathways into employment in the building and construction trades and assist in resolving barriers which might inhibit the availability of employment in such trades to Disadvantaged Workers.
- E. Receive and review the Monthly Reports referred to in Subparagraph 1 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that is not meeting the Best Efforts requirements of the Program of any deficiency and collaborate on identification of steps that such Contractor or Subcontractor can perform to address the deficiency.
- F. Receive and review the Completion Reports referred to in Subparagraph 2 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that has not met the Best Efforts requirements of the Program of that deficiency. Document and report any explanations or extenuating circumstances provided by Contractor or any Subcontractor for not having met the Program Goals.

CITY OF DULUTH, by its Workforce Development Department

By: _____

Its Director

_____(Insert Developer Name)

By: _____

Its: _____

_____(Insert Contractor Name)

By: _____

Its: _____

EXHIBIT G

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2021, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and MERGE, LLC, D/B/A MERGE URBAN DEVELOPMENT GROUP, An Iowa limited liability company (“Developer”), entered into a Development Agreement, which agreement was recorded in the Office of the St. Louis County Registrar of Title on _____, 2021, as Document No. _____ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described in the attached Exhibit A (the “Property”).

B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.

C. Paragraph D of Article VII of the Development Agreement provides that a Certificate of Completion be issued by DEDA’s Executive Director upon, among other things, completion by Developer of the construction of the Project in accordance with the Development Agreement.

D. Developer has completed construction of the Project in a manner deemed sufficient by DEDA to permit execution and recording of this Certificate of Completion.

NOW, THEREFORE:

1. Construction of the Project required to be performed by Developer pursuant to the Development Agreement with respect to the Property, has been completed, and those requirements under the Development Agreement which relate solely to construction obligations of the Project have been fulfilled, but all other conditions and restrictions contained in the Development Agreement shall remain in effect.

2. The Registrar of Titles in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director

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

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, the Executive Director of the Duluth Economic Development Authority, an economic development authority under Minnesota Statutes Chapter 459, on behalf of the authority.

Notary Public

This instrument drafted by:

EXHIBIT G

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2021, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and MERGE, LLC, D/B/A MERGE URBAN DEVELOPMENT GROUP, An Iowa limited liability company (“Developer”), entered into a Development Agreement, which agreement was recorded in the Office of the St. Louis County Registrar of Title on _____, 2021, as Document No. _____ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described in the attached Exhibit A (the “Property”).

B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.

C. Paragraph D of Article VII of the Development Agreement provides that a Certificate of Completion be issued by DEDA’s Executive Director upon, among other things, completion by Developer of the construction of the Project in accordance with the Development Agreement.

D. Developer has completed construction of the Project in a manner deemed sufficient by DEDA to permit execution and recording of this Certificate of Completion.

NOW, THEREFORE:

1. Construction of the Project required to be performed by Developer pursuant to the Development Agreement with respect to the Property, has been completed, and those requirements under the Development Agreement which relate solely to construction obligations of the Project have been fulfilled, but all other conditions and restrictions contained in the Development Agreement shall remain in effect.

2. The Registrar of Titles in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.

CERTIFICATE OF COMPLETION

EXHIBIT A

Legal Description of Property

That real property legally described as follows:

Lots 321 and 323, Block 53, Duluth Proper Second Division, St. Louis County,
Minnesota

RESOLUTION 21D-26

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH SATURDAY ZENITH, LLC FOR THE DEVELOPMENT OF THE ZENITH HISTORIC OLD CENTRAL HIGH SCHOOL PROJECT

WHEREAS, Saturday Zenith, LLC (“Developer”), proposes to redevelop property located between Lake Avenue and First Avenue East and between Second Street and Third Street in Duluth, Minnesota into a multi-family residential facility with apartment units (the “Project”);

WHEREAS, DEDA has determined that it is reasonable and necessary to provide certain financial assistance to Developer in order to facilitate Developer’s plans for the Project and to that end, DEDA and Developer have negotiated a Development Agreement for the Project; and

WHEREAS, DEDA has approved the establishment of Tax Increment Financing District No. 34, a Redevelopment District (the “TIF District”) pursuant to Minnesota Statutes §§469.174 to 469.1794, as amended; and

WHEREAS, pursuant the terms of the Development Agreement, DEDA proposes to provide certain tax increment financing assistance to Developer consisting of a pay-as-you-go tax increment revenue note (the “TIF Assistance”) payable from the TIF District; and

WHEREAS, the TIF Assistance constitutes a business subsidy within the meaning of Resolution 18-0515R of the City of Duluth (the “Business Subsidy Resolution”), and the Development Agreement constitutes a “business subsidy agreement” under the Business Subsidy Resolution; and

WHEREAS, pursuant to Minnesota Statutes §§116J.993 through 116J.995 (the “Business Subsidy Act”), after a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero; and

WHEREAS, DEDA on this same date held a duly noticed public hearing on the granting of a business subsidy to Developer pursuant to the Development Agreement and on setting the wage and job goals at zero in accordance with the Business Subsidy Act; and

NOW, THEREFORE, BE IT RESOLVED:

1. DEDA finds that the Development Agreement is in the best interests of the City and the welfare of its residents, and in accordance with the public purposes and provisions of the applicable State and local laws and requirements under which the development will be undertaken.

2. DEDA hereby determines that the Project will enhance the economic diversity of the City and the City's tax base; enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas and stimulating the redevelopment of underutilized, blighted or obsolete land uses, expand the City's tax base and realize a reasonable rate of return on the public investment; encourage the development of housing and commercial areas in the City that result in higher quality development and private investment; and achieve redevelopment on a site which would not be redeveloped without assistance. DEDA hereby determines that the creation or retention of jobs is not a goal of the Project for purposes of the Business Subsidy Act. Therefore, the wage and job goals may be and hereby are set at zero in the Development Agreement in accordance with the Business Subsidy Act.
3. DEDA hereby authorizes the proper DEDA officials to enter into a Development Agreement with Developer substantially in the form of that attached hereto (DEDA Contract No. 21-860-____), together with any related documents necessary in connection therewith.
4. DEDA staff, officials and consultants are authorized and directed to implement the terms of the Development Agreement as provided therein and carry out DEDA's obligations under the Development Agreement.

Approved by the Duluth Economic Development Authority this 28th day of July 2021.

ATTEST:

Executive Director

STATEMENT OF PURPOSE:

This resolution authorizes a Development Agreement with Saturday Zenith, LLC for the development of the Zenith Historic Old Central High School project located between Lake Avenue and First Avenue East and between Second Street and Third Street in downtown Duluth. The project will be located in an area identified as Tax Increment Financing District No. 34, a Redevelopment District. A resolution approving the creation of TIF District No. 34 will be on the August 16, 2021, City Council agenda.

The Development Agreement provides for the acquisition of the property and redevelopment of the existing buildings by Developer resulting in approximately 125

apartment units and common areas. Of these apartment units, not less than 13 units will be available at 60% or less of the Area Median Income, as posted annually by the Minnesota Housing Finance Agency. The total development cost is estimated to be \$42,365,179. DEDA will provide up to \$2,940,000 of the TIF generated by this project plus interest at the rate of 3.25% to pay for public eligible costs of redevelopment on a pay-as-you-go basis. The term of the TIF Note is for a period of twenty six (26) years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment, or until the principle interest on the TIF Note has been paid in full, whichever is sooner; the note is projected to be paid in year 18.

Tax base impact statement: The current market value (2021, payable 2022) of the properties located in this 26-year Redevelopment TIF District (to be created by DEDA) is \$4,500,000 and the property is generating \$0 in net tax capacity. After the improvements are completed, the taxable market value will increase to approximately \$15,600,000 and the annual tax increment will be provided to the Developer to facilitate the redevelopment. After the TIF District is terminated, the development is anticipated to generate over \$195,000 per year in net tax capacity (based on the County Assessor's valuation of the completed property, not including inflation).

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
SATURDAY ZENITH, LLC
ZENITH (HISTORIC OLD CENTRAL HIGH SCHOOL) PROJECT**

THIS AGREEMENT entered into this _____ day of _____, 2021, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and SATURDAY ZENITH, LLC, a Minnesota limited liability company, hereinafter referred to as "Developer".

WHEREAS, Developer is acquiring the Historic Old Central High School property, hereinafter described, and the buildings located thereon, which is located between Lake Avenue and First Avenue East and between Second Street and Third Street in downtown Duluth and has proposed to develop the Project as hereinafter described which includes the redevelopment of the existing buildings into not less than 120 apartment units, 10 % of which will be affordable, and community space, all as further hereinafter described; and

WHEREAS, Developer has requested assistance from DEDA for acquisition of the property, redevelopment of the existing buildings, site preparation and infrastructure costs and other costs eligible for public financing related to the Project as is hereinafter set forth since, without such assistance, the Project would not be economically viable; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the wellbeing and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the development of the Project; and

WHEREAS, after careful analysis of the projected costs of the Project and of the financial resources available and economic feasibility of such funding to pay for the costs of the Project described herein, DEDA has determined that:

- A. a "gap" exists between the cost to Developer of the Project and the funds

presently available to or known to Developer and DEDA to be available to finance those costs at rates that would make the Project economically feasible as hereafter described, which gap, based on the best currently-available estimates, is at least \$2,940,000;

- B. without the tax increment assistance to be provided pursuant to this Agreement, the cost of developing the Project would be more than can be supported by the amounts that are affordable to be charged for the rental and the available resources would be inadequate to fund the development of said Project on a financially feasible basis and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future; and
- C. the increased market value of the Property that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the Project after subtracting the present value of the projected tax increment for the duration of this Agreement.

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to stimulate the redevelopment of underutilized, blighted or obsolete land uses to encourage the development of residential rental housing, especially low and moderate income housing, in an area of the city that is in dire need of such housing, to achieve development on property which would not be redeveloped without assistance, and to enhance and diversify the tax base of the City of Duluth; and

WHEREAS, the Property is located in a redevelopment district within the meaning of Minnesota Statutes §469.174 et. seq. (Tax Increment Financing District No.34).

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:

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Available Tax Increment: means 90% of the Captured Tax Increment in the six (6) month period preceding each Scheduled Payment Date, as defined in the TIF Note.
- B. Building: means the Historic Old Central High School building located on the Property.
- C. Certificate of Completion: means a written certification executed by the Director in recordable form certifying that the construction of the Project in conformance with the Plans has been totally completed.
- D. Certificate of Substantial Completion: means a written certification executed by the Director in recordable form certifying that the construction of the Project has been substantially completed except for those elements of the Project set forth on the Punch List approved by the Director as provided for in Paragraph D of Article V below. A Certificate of Substantial Completion shall not constitute or substitute for a Certificate of Completion as provided for in Paragraph E of Article V below.
- E. Captured Tax Increment: means all real estate taxes resulting solely from the payment of real estate taxes on the Captured Net Tax Capacity, as defined in Minnesota Statutes Section 469.174, Subd. 4, of the Property resulting from the Project remitted to DEDA by the St. Louis County Auditor and received by DEDA.
- F. City: means the City of Duluth.
- G. Director: means the Executive Director of DEDA or such person or persons designated in writing by said Director to act on behalf of him/her with regard to this Agreement or any portion thereof.
- H. Eligible Project Costs: means those Project Costs set forth in Exhibit A which may be legally funded with tax increment proceeds under Minnesota Statutes

§469.174 et. seq. and case law. The current estimate of Eligible Project Costs is \$2,940,000.

- I. Plans: means the plans, specifications and elevations for the Project together with detailed utility and landscaping plans and elevations for the Project as approved pursuant to Article IV below.
- J. Project: means the redevelopment of the Building on the Property by Developer of not less than One Hundred Twenty (120) residential apartment units consisting of studio apartments, one-bedroom apartments, two-bedroom apartments, and three-bedroom apartments, Ten Percent (10%) or more of which will be held for rent to persons having an income at or below 60% of the area median income at rental rates determined by the United States Department of Housing and Urban Development to be affordable to such persons, and common area space adequate to serve the needs of the building occupants, all at a cost of not less than Forty-two Million Dollars (\$42,000,000) including property acquisition, and all according to the plans approved by the Director pursuant to Article IV and pursuant to required City approvals. In the event that the application of the percentage calculation above results in a fractional unit, the number of units to be held for rent to persons having an income at or below 60% of the area median income shall be rounded up to the next higher number of units.
- K. Project Costs: shall mean the sum of the Eligible Project Costs and in addition those costs of the Project described in Exhibit B attached hereto and made a part hereof.
- L. Property: means that real estate located in St. Louis County, Minnesota, described on Exhibit C attached hereto and made a part hereof and the Building located thereon.
- M. Punch List: means a list of those elements of the Project, as shown on the Plans, that remain to be completed at the time of the issuance of the Certificate of Substantial Completion as provided for in Paragraph D of Article V below.
- N. TIF Act: means Minnesota Statutes, Sections 469.174 through 469.179, as the same may be amended from time to time.
- O. TIF District No. 34: means DEDA's Tax Increment Financing District No.34.

- P. TIF Note: means a limited revenue tax increment financing note (“pay-as-you-go” note) to be issued by DEDA to the Developer pursuant to Article VI of this Agreement in substantially the form of that attached hereto as Exhibit D.
- Q. TIF Plan: means the Tax Increment Financing Plan for TIF District No. 34 authorized in accordance with the TIF Act, which TIF Plan is on file in the office of the Director.

ARTICLE II

Application Fee and Reimbursement of Consultant Costs

In consideration of the financial assistance provided by DEDA to Developer pursuant to the terms of this Agreement, Developer has paid to DEDA a non-refundable application fee of Three Thousand and No/100 Dollars (\$3,000.00). Additionally, Developer agrees to reimburse DEDA within thirty (30) days of transmission of an invoice by DEDA to Developer for services of Ehlers & Associates, Inc. to perform a “but for compliance test” for the Project and to draft and assemble a TIF Plan in an amount of not to exceed Thirty Thousand Dollars (\$30,000).

ARTICLE III

Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to the Director the following items:

- A. Title. Proof reasonably satisfactory to the Director that Developer owns the Property in fee simple.
- B. Construction Costs. Developer’s certified estimate of the total cost of the construction of the Project.
- C. Construction Contract. A copy of the executed contract between Developer and its general contractor necessary to complete the renovation and the construction of the Project in accordance with Plans approved pursuant to Article V. Such contract shall provide that payments for the work thereunder are the sole

obligation of Developer. Such contract shall include the requirement that said contractor agrees to enter into a Project Labor Agreement conforming to the requirements of Article IV of Chapter 2 of the Duluth City Code, 1959, as amended and to conform to the Community Benefits Requirements as set forth in Exhibit E, attached hereto and made a part hereof and that the laborers, mechanics or apprentice-trainees employed in the construction of the Project are to be paid at wage rates equal to or greater than those required pursuant to the prevailing wage rate as defined in Section 2-25 of the Duluth City Code, 1959 as amended and regulations related thereto. All payrolls for the construction trades performing work on the Project must be submitted to the Director on a monthly basis. Said contract shall further require such contractor to comply with all applicable federal, state and local laws, ordinances and regulation including but not limited to the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).

- D. Construction Financing. Copies of loan commitments and other financing commitments obtained by Developer for the Project, the total of said commitments and any equity contribution commitment by Developer or its partners totaling an amount not less than the total contract price between Developer and the general contractor as described in Paragraph C above.
- E. Survey. A survey of the Property performed by a Registered Land Surveyor under the laws of the State of Minnesota.

ARTICLE IV

Project Plans

- A. Plans, Specifications and Elevations. Developer shall submit the Plans for the Project to the Director for approval within five (5) business days of the date of this Agreement. Developer shall be solely responsible for the cost of developing and producing all plans and specifications for the Project and for any modifications thereto. All such Plans shall be in conformance with this Agreement, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. Except as

provided for below, the plans shall be consistent with the schematic design previously submitted to the Director which shall consist of drawings and other documents illustrating scale and relationship of various Project components; provided that, upon the Developer presenting the justification of the need therefore, the Director shall have the discretion to approve deviations from said schematic design. The Director shall review and approve or disapprove the Plans in writing within fifteen (15) days of submission of the Plans by Developer. If the Director rejects the Plans in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected Plans meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected Plans herein provided for with respect to the originally submitted Plans shall continue to apply until said Plans have been approved in writing by the Director. The Director's approval of Developer's Plans shall constitute satisfaction of the above requirements for the purposes of this Agreement but shall not constitute a guaranty that the Plans conform to the requirements of applicable building, zoning or other codes or ordinances and shall not constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with the Plans and any revisions thereto.

- B. Changes after Initial Approval. Any material or substantial changes made to Plans by Developer after initial review of the Director shall be submitted to the Director for approval in the same manner provided for in Paragraph A above.

ARTICLE V

Construction

- A. Construction. Upon the fulfillment of the preconditions to construction provided for in Articles III and IV above, but in no event later than Ninety (90) days following Developer's acquisition of the Property, Developer shall commence

construction of the Project in conformance with the Plans approved pursuant to Article IV. Said construction work shall be completed as evidenced by the issuance of a permanent Certificate of Occupancy for the residential portion of the Property not later than September 30, 2023 except for reasonable “punch list” items of work approved by the Director. Notwithstanding the above, the construction period may be extended for (i) unavoidable delays which may include material and labor shortages with the prior written approval of the Director or (ii) by reason of the occurrence of a force majeure event as provided for in Article XXIV below.

- B. Developer to Bear All Costs. Except for payments by DEDA provided for in Article VI, Developer specifically agrees to bear all costs related to the construction of the Project and any modifications thereto.
- C. Progress Reports. Until construction of the entire Project is complete, Developer shall make reports no more frequently than monthly in such detail as may reasonably be requested by the Director as to the actual progress of Developer with respect to the Project. Additionally, upon reasonable notice, the Developer agrees that it will permit DEDA access to the Property and will allow representatives of the Director to inspect the progress of the work, subject to standard construction industry site safety protocols.
- D. Certificate of Substantial Completion.
Upon the Developer receiving a certificate of substantial completion from the design professional providing design services to the Project, the Developer may present a copy of said certificate to the Director along with a list of construction items, commonly referred to in the construction industry as “punch list” items, prepared by said design professional, remaining to be completed before a Certificate of Completion, as herein defined, can be issued. Said list shall be subject to the approval of the Director, which approval shall not be unreasonably withheld. Upon the approval of the Director of said Punch List and receipt of the design professional’s certificate of substantial completion, the Director shall issue a Certificate of Substantial Completion as defined in Paragraph D of Article I above.

- E. Project Costs/Certificate of Completion. Promptly upon completion by Developer of the construction of the Project, Developer shall submit to the Director written evidence in a form satisfactory to the Director of Eligible Project Costs incurred and paid. Such evidence shall include, at a minimum, paid invoices, receipts, canceled checks, mechanic lien waivers or comparable evidence of payment of at least the amount of the Construction Contract and any other Eligible Project costs claimed by Developer. DEDA and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Eligible Project Costs and the Project. Such records shall be kept and maintained by Developer for a period of six (6) years following the issuance of the Certificate of Completion. Upon furnishing by Developer of said written evidence satisfactory to the Director of such costs and of completion by Developer of the construction of the Project in accordance with this Agreement, and upon written request from Developer, the Director will furnish to Developer a Certificate of Completion in the form of that attached hereto as Exhibit F so certifying. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction obligations of Developer undertaken pursuant to this Agreement and may be recorded against the Property.

ARTICLE VI

TIF Payment Obligations

- A. Issuance of TIF Note Upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article V and the submission of the audit provided for in Paragraph B below, DEDA shall execute and deliver to Developer a TIF Note in substantially the form of Exhibit D. The principal amount of the TIF Note shall be \$2,940,000 or the amount of documented Eligible Project Costs, whichever is less; provided that in the event that the Project Costs is less than Forty-two Million Dollars (\$42,000,000) the amount of the TIF Note will be further reduced by an amount equal to one-half (1/2) of the difference between Forty-two Million

Dollars (\$42,000,000) and the amount of the Project Costs determined in the manner set forth in Paragraph B below.

- B. Project Costs Audit Upon completion of the construction of the Project, Developer shall cause an audit of the Project Costs to be prepared by a certified public accountant and submitted to DEDA. The results of the audit shall be subject to review and approval of the Director for conformance to the requirements of this Agreement. The Developer may select the certified public accountant to perform the audit but that person or entity shall be subject to the prior approval of the Director in writing.
- C. First TIF Payment Pursuant to the TIF Plan, DEDA's first receipt of Available Tax Increment will be in 2023. Interest payable on the TIF Note(s) in the amount of 4% per annum shall start to accrue on the date of execution of the TIF Note. 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 and paid by the Developer.
- D. TIF Note Payments Developer acknowledges and agrees, as provided in the TIF Note, that payments under the TIF Note shall be bi-annual payments in the amount of the Available Tax Increment attributed to Property received by DEDA in the six months preceding each Scheduled Payment Date as defined in the TIF Note. There shall be no interest on unpaid interest as it accrues. DEDA shall not be obligated to make any payments except as provided in the TIF Note.
- E. TIF Note Not "Security" The TIF Note will be issued without registration under the State or federal securities laws pursuant to an exemption for such issuance; and, accordingly, the TIF Note may not be assigned, transferred or pledged, in whole or in part, except in conjunction with and to the same transferee as an assignment of this Agreement as permitted herein. Notwithstanding the foregoing, the Director shall at all times maintain a register setting forth the current holder of the TIF Note which shall reflect any transfers of the TIF Note and be determinative of the identity holder and to whom payments on the TIF Note are to be made.
- F. Revenue Only Obligation DEDA's financial commitment for payment of the TIF

Note under this Agreement is a revenue obligation only and will be paid by DEDA only out of Available Tax Increment actually received by DEDA. Developer acknowledges that DEDA makes no representations or warranties that the Available Tax Increment will be sufficient to pay Developer all amounts due and payable pursuant to TIF Note. Developer acknowledges that Available Tax Increment is subject to calculation by St. Louis County and changes in state statute and that some or all of the amount of the TIF Note may not be paid and in such event, the amount of payments otherwise due to Developer under Paragraph A above shall be deemed, upon termination of this Agreement, to have been paid in full and DEDA shall have no further obligations for payments of said amounts.

- G. Available TIF Estimate Developer acknowledges that the estimates of Available Tax Increment and tax projections, which may have been made by DEDA or its agents, officers or employees are estimates only, are made for the sole use and benefit of DEDA and are not intended for Developer's reliance. DEDA does not warrant that it will have throughout the term of this Agreement the continuing legal ability under State law to apply Available Tax Increment to the payment of the TIF Note.
- H. TIF Note Assignable Notwithstanding anything to the contrary in this Agreement, the TIF Note may be assigned, transferred or pledged without the approval of DEDA; provided that any assignment, transfer or pledge of the TIF Note shall be made in accordance with the requirements set forth in the TIF Note and with Paragraph E above.

ARTICLE VII

Operating Covenants

Developer agrees that in its operations and use of the Property and the Project, in accordance with industry standards, Developer shall:

- A. Maintenance. At all times cause the Project and the Property to be operated and maintained in a neat, orderly condition, to maintain and preserve and keep in

good repair, working order and condition said Property and Project and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Project and the Property shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all roofing systems as well as outside maintenance including snow removal, grass cutting and landscape maintenance, parking lot and area cleaning if applicable, repair and striping and all other exterior maintenance to said Property and the Project.

- B. Rental Restriction; Reporting: Developer agrees and commits that, during the Term of this Agreement as set forth in Article XV below, the units in the Project that are to be rent restricted as described in the definition of the Project will be rented to persons having an income at or below 60% of the area median income at rental rates determined by the United States Department of Housing and Urban Development to be affordable to such persons. No later than January 30th of each year, the Developer shall provide certification in the form required by the Director together with reasonable reports and documentation as the Director shall reasonably request demonstrating that said rent restricted units had been so rented to or held for rental to such persons during the entirety of the prior calendar year.
- C. Utilities. Unless currently and validly disputed, pay or cause to be paid any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power. Provided that nothing herein shall prohibit or limit the ability of Developer or other landlord or agent to bill the cost of such services or fees to tenants or other users.
- D. Licenses and Permits. Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Project and the Property and to be qualified to do business in the State of Minnesota.
- E. Obey All Laws. Conduct its affairs and carry on its business and operations with

respect to the Project and the Property in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota including all laws related to unlawful discrimination and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Project and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Project and the Property.

- F. Payment of Taxes. Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Project or the Property, subject to the right to contest in good faith in accordance with Minnesota law.
- G. Assessment Fees and Charges. Pay or cause to be paid when due or payable all special assessments or installments thereof levied upon or with respect to the Project and the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Project and the Property and all other charges lawfully made by any governmental body for public improvements. Provided that nothing herein shall prohibit or limit the ability of Developer or other landlord or agent to bill such assessment or installments to tenants or other users as long as the result of doing so would not increase the rent of the rent restricted units to exceed the allowable rent under affordability guidelines as referenced in Paragraph H of Article I above.
- H. Obligations and Claims. Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.
- I. Living Wage. Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance") and

to require those construction workers directly employed in the construction of the Project to be paid Prevailing Wage Rates as that term is defined in Section 2-25 of the Duluth City Code.

- J. Annual Capital Improvement Commitment: Commencing on January 30 of each year following the eighth year after receipt of First Tax Increment by Developer as provided for in Article VI above and annually thereafter during the term of this Agreement as provided for in Article XVI below, Developer shall present to the Director proof that, during the prior five (5) calendar year period, Developer had invested an annual average of at least Eighty-seven Thousand Five Hundred Dollars (\$87,500) in capital improvements or extraordinary capital repairs to the Project as such terms would be generally defined or determined by Generally Accepted Accounting Practices.
- K. Clock Tower: The parties agree that the portion of the Building known as the "Clock Tower" is of special historic significant and that it is treasured asset of the City of Duluth and that it is important to its citizenry. Developer hereby agrees that it will make the "Clock Tower" accessible to the public during reasonable business hours on a reasonably frequent basis as set forth below. Upon completion of construction of the Project, Developer shall present a plan for providing such access to the public to the Director for the Director's approval or disapproval; approval shall not be unreasonably withheld. If the Director disapproves of the plan, the Director shall return the plan to the Developer with an explanation of the reasons for disapproval. The Developer shall then submit a revised plan to the Director within fifteen (15) days of receipt of such disapproval and an explanation thereof. This process for submission and approval shall continue until a plan is approved. The Developer shall thereafter provide for public access in accordance with the approved plan. From time to time after approval, Developer shall have the right to submit a new plan for review and approval which shall be subject to the same approval process. Upon approval of a new plan, the prior plan shall be deemed to have been superseded.

ARTICLE VIII

Provision against Liens, Assignments and Transfers

- A. Provision against Liens. Except for encumbrances permitted pursuant to this Article, the Developer shall not create or permit any mortgage or encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project and the Property or any part thereof which would materially or adversely affect DEDA's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify DEDA of its intention to do so and post such security as DEDA reasonably deems necessary which security shall be considered in light of the requirements of the United States Department of Housing and Urban Development, and which Developer may elect to satisfy by the bonding over of such lien in accordance with Section 514.10 of Minnesota Statutes. , Developer may, in good faith, contest any such mechanic's or other liens filed or established. If DEDA deems its interest or rights in this Agreement to be subject to foreclosure by reason of any such lien, Developer agrees to cause such lien to be "bonded over" to protect DEDA's interests.
- B. Transfers prior to Issuance of a Certificate of Completion. The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, the Project and the Property. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the issuance of a Certificate of Completion, Developer represents and agrees 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, 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, the Project, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of

Developer's rights hereunder without the prior approval of DEDA. Developer shall have the right to admit additional equity members provide that such admission does not result I a change in the control of Developer or of the Project.

C. Permitted Encumbrances. Notwithstanding anything in this Article to the contrary, Developer is authorized, without the approval of DEDA, to obtain construction and permanent financing for the Project and to mortgage the Project and Property and to collaterally assign the Note in conjunction therewith to provide security for the construction and permanent financing. In addition, Developer is authorized to lease the apartment units to tenants at all times without the approval of DEDA. Developer shall also have the right to grant and accept easements, licenses or similar rights reasonably deemed by the Developer to be necessary or desirable for the Project with the prior written consent of the Director.

D. Transfers after Issuance of a Certificate of Completion.

Following the issuance of a Certificate of Completion, Developer may sell, convey or otherwise transfer the Property or any tract or parcel thereof with the prior written consent of DEDA, which consent shall not be unreasonably withheld, provided the following has been satisfied:

1. Thirty days' prior written notice of the transfer is provided to the Director.
2. The transferee shall agree by written commitment to DEDA to comply with all the terms and conditions of this Agreement not otherwise extinguished by the completion and Certification of Completion of the Project. The commitment shall comply with the terms of this Paragraph 2 and shall be approved to the Director.

The Director shall be entitled to withhold their consent only if the Director can present credible evidence that the proposed transferee has a record of bad management of housing project, of significant violations of law in the operation of housing project, or if said transferee has such a poor credit history or presents such a poor credit risk as to call into reasonable question said transferee's ability to property manage and maintain the Project. Notwithstanding the above

transfer, the payment of the tax increment pursuant to Article VIII shall be made to the registered owner of the TIF Note as provided for in Paragraph E of Article VII above. Failure to comply with the requirements of subparagraphs 1 and 2 above shall render such purported transfer void.

E. Modification; Subordination.

1. Generally

In the event any portion of the Developer's funds is provided through mortgage financing, subject to the following, DEDA agrees to subordinate its rights under this Agreement to the holder of any mortgage securing construction or permanent financing, in accordance with the terms of a subordination agreement in a form reasonably acceptable to DEDA. Provided, however, that the form of any such subordination shall specifically require that in the event that the holder of any such mortgage and/or any successor in interest thereto becomes the owner of the Property, such holder or successor in interest shall continue to operate the Project in a manner required by Paragraph B of Article VIII above.

2. Exception 1

Notwithstanding the provisions of Sub-subsection 1 above, if such holder or successor shall have acquired such interest by way of foreclosure of its mortgage and is shall have waived any and all rights to receive payments under the TIF Note as provided for in Article VI above, said holder or successor shall not be bound by the provisions of Paragraph B of Article VII above.

3. Exception 2.

Notwithstanding the provisions of Sub-subsection 1 above, if such holder demonstrates to the reasonable satisfaction of the Director that the requirements of said Paragraph B imposes a hardship on such holder so as to render the Project economically unviable, the Director may release such holder from this obligation.

4. Exception 3.

Notwithstanding anything to the contrary, DEDA and Developer acknowledge and agree that this Agreement shall be subordinate to a mortgage securing any financing provided by the United States Department of Housing and Urban Development; this provision shall be self-operative, with or without a separate agreement of subordination.

ARTICLE IX

Indemnification

- A. Generally. Developer shall, to the fullest extent permitted by law, protect, indemnify and save DEDA and the City and their officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:
1. Any injury to or death of any person or damage to property in or upon the Project or the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and also, without limitation, the construction or installation of the Project or any portion of the Project. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
 2. Any violation by Developer of any provision of this Agreement.
 3. Any violation by Developer of any contract, agreement or restriction related to the Project or the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or

4. Any violation by Developer of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification. In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and 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 reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing in the Project or on the Property, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or on the Property, or the release or threatened release 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 persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs 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 such conditions existing in the Project or on the Property.

C. Indemnification Procedures. Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA or the City under this Article, DEDA shall notify Developer in

writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA or the City with respect to which indemnity may be sought against Developer, DEDA and the City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Developer.

- D. Exceptions to Indemnification. In no event shall Developer be required to indemnify DEDA or the City under this Article for liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims, demands and judgments of any nature arising solely from the negligent or intentional misconduct of DEDA or the City or their officers, agents, servants, employees.

ARTICLE X

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following:

- A. Insurance during Construction. Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:
1. Property Insurance. Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project,

including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project and the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force.

2. Public Liability Insurance. Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds on the Commercial General Liability Insurance and Automobile Liability Insurance policies. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:
 - a. Contractors public liability--premises and operations;
 - b. Independent contractors' protective contingent liability;
 - c. Personal injury;
 - d. Owned, non-owned, and hired vehicles;
 - e. Contractual liability covering customary construction contract and subcontract indemnity provisions;
 - f. Workers' Compensation coverage in required statutory limits.Policy shall carry an "all states" endorsement. In addition,

employers' liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance. Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the Project and the Property, carried in the name of Developer as follows:

1. Property Insurance. Prior to expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$50,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer and DEDA hereby mutually waive any and all claims or causes of action against the other party for damages caused by an insured peril hereunder. Said waiver shall not affect DEDA's rights under Paragraph F and G below in the event of such loss.
2. Liability Insurance. During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds therein. Insurance shall cover:
 - a. Public liability, including premises and operations coverage;

- b. Independent contractors--protective contingent liability;
 - c. Personal injury;
 - d. Owned, non-owned and hired vehicles;
 - e. Contractual liability covering the indemnity obligations set forth herein;
 - f. Products--completed operations.
3. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA. Employees' liability insurance shall be carried in limits of \$100,000 per employee.
- C. Modification of Insurance Requirements. It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the equivalent types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect or upon the next renewal by Developer of its insurance coverage, whichever is later.
- D. Requirements for All Insurance. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.
- E. Certifications. Developer shall be required to supply to DEDA written certifications of insurance requiring the insurer to give DEDA thirty (30) days' written notice prior to cancellation of said insurance for any reason other than non-payment of premium and ten (10) days' written notice prior to cancellation for non-payment of premium of said insurance.

- F. Reconstruction Obligation and Uninsured Loss. Except as provided for in Paragraph G below, in the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, or construct improvements in a manner which is approved by DEDA, such approval which shall not be unreasonably withheld, and to the extent necessary to accomplish such repair, reconstruction, restoration, or construction, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.
- G. Reconstruction Obligation Contingency Nothing to the contrary in Paragraph F above, in the event that the Project is substantially or totally destroyed and the parties reasonably agree in good faith that, under present economic or social conditions and all available evidence, the reconstruction of the Project in the form that it was in at the time of the issuance of the Certificate of Completion, as contemplated by Paragraph F above, is not economically possible or economically reasonable or does not constitute the highest and best use of the Property, the parties hereby commit to meet and confer in good faith to reasonably determine the use of the Property which will be of greatest economic, social and practical use to the Developer, to the City, and to DEDA and use their best efforts to negotiate an amendment of this Agreement to implement that use and to apply the proceeds of any insurance to implementation of that use.

ARTICLE XI

Defaults and Remedies Therefor

- A. Developer's Default. The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the

remedies set forth in Paragraph B below shall be applicable.

1. Developer shall fail to pay real estate taxes within twenty (20) days of the date when due and payable.
2. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be reasonably incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.
3. Developer shall permit valid liens, not released against the Property or contested within thirty 30 days, to be placed on the Project or the Property or Developer loses title to the Project or the Property or both.
4. Developer makes an assignment for the benefit of its creditors or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similar action under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within ninety (90) 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 Developer's properties or fails to have dismissed or vacated within ninety (90) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

B. DEDA's Remedies for Developer's Defaults. DEDA shall have the following remedies in the event of a default:

1. Terminate this Agreement or the TIF Note or both.
 2. Withhold the performance of any obligation owed by DEDA under this Agreement or the TIF Note or both.
 3. Seek and be entitled to monetary damages for any damages incurred by DEDA as a result of an event of default.
 4. Cease or suspend making payments under this Agreement and the TIF Note of Available Tax Increment as defined in the TIF Note.
 5. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
 6. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.
- C. Non-Waiver. The waiver by DEDA of any default on the part of Developer or the failure of DEDA to declare default on the part of Developer 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 Developer of the same or of any other obligation of Developer under this Agreement. To be effective, any waiver of any default by Developer hereunder must be in writing by the Director.
- D. Default by DEDA. The failure of DEDA to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an event of default by DEDA. Whenever an event of default occurs by DEDA, Developer shall be entitled to all remedies available at law or equity, and Developer may take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
- E. Remedies Cumulative. The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion

of default hereunder.

- F. Attorneys' Fees. In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XII

Representations by DEDA

DEDA makes the following representations as the basis for the undertaking on its part herein contained:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any federal, state, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA will perform all of its obligations under this Agreement.
- D. Based on reasonable knowledge and belief, DEDA believes that the Project contemplated by this Agreement is in conformance with the development objectives set forth in the TIF Plan.
- E. As of the execution of this Agreement, the City and DEDA have approved the TIF Plan in accordance with the requirements of the TIF Act.

ARTICLE XIII

Developer's Representations and Warranties

Developer represents and warrants that:

- A. The Developer is a Minnesota limited liability company duly organized and authorized to transact business in the State, it is fully competent to acquire the Property and to construct the Project thereon, it is not in violation of any provisions of its articles of organization, member control agreement, or the laws of the State, it has the power to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.
- B. Developer will perform all of its obligations under this Agreement. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of the terms, conditions, or provisions of any agreement or instrument of whatever nature to which the Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.
- C. As of the date hereof, no actions, suits, or proceedings are pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any federal, state, or municipal or other governmental agency that, if decided adversely to Developer, would have a material adverse effect upon Developer, the Property, or the Project, and Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Property or the Project.
- D. Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and prevailing wage requirements. The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and

federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

- E. As of the date hereof, Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. Developer shall use its best efforts to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to DEDA or any third party under this Agreement to be true, correct, and complete in all material respects to the best of its knowledge. Developer shall correct or cause the correction of any material inaccuracies of which Developer becomes aware.
- G. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental and the available resources would be inadequate and not economically feasible to construct the Project and that, therefore, but for the DEDA assistance to be provided for hereunder, the Project would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

ARTICLE XIV

Term

The term of this Agreement shall commence on the date first shown above and shall continue for a period of 19 years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment or when the TIF Note has been paid off unless this Agreement is otherwise terminated as provided for herein. Termination shall not terminate any indemnification provisions or any other provisions which by their nature survive termination and shall not terminate any other rights or remedies arising under this Agreement due to any event of default which occurred prior to such termination.

ARTICLE XV

Agreement Personal to Parties

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to the extent assignment is permitted hereunder. This Agreement shall run with the land.

ARTICLE XVI

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 a nationally recognized overnight courier or by registered or certified mail, postage prepaid to:

In the case of DEDA: DEDA
Room 402 City Hall
411 West First Street
Duluth, MN 55802
Attn: Executive Director

In the case of Developer: Saturday Zenith LLC
c/o Saturday Properties LLC
3546 Dakota Ave. S. Suite D
St. Louis Park, MN 55416
Attn: Brenton D. Rogers

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Article.

ARTICLE XVII

Recordation

Promptly following the full execution of this Agreement and delivery of the same to Developer, Developer agrees to record this Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation and return thereof, Developer shall promptly submit to DEDA

executed original copies of the Agreement showing the date and document numbers of record, or certified copies of the filed original documents.

ARTICLE XVII

Disclaimer of Relationships

Developer acknowledges that nothing contained in this Agreement nor any act by the City, DEDA or the Developer shall be deemed or construed by Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between DEDA, Developer and/or any third party.

ARTICLE XIX

Applicable Law

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

ARTICLE XX

Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

ARTICLE XXI

Authorization to Execute Agreement

Each party represents to the other that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of such party

who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of such party in accordance with the terms and conditions thereof.

ARTICLE XXII

Title of Articles

Any title, articles and paragraphs in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE XXIII

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.

ARTICLE XXIV

Force Majeure

Neither party shall be held responsible for, and neither party shall be in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions or restrictions, judicial actions by third parties, labor disputes, pandemics or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

ARTICLE XXV

Consents, Approvals and Satisfaction

Whenever the consent, approval or satisfaction of a party hereunder is required under the terms of this Agreement, such consent, approval or satisfaction shall not be

unreasonably withheld, conditioned or delayed.

ARTICLE XXVI

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein, including all exhibits hereto, which are hereby incorporated by reference, 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.

ARTICLE XXVII

Counterparts

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

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

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By: _____

Its President

By: _____

Its Secretary

SATURDAY ZENITH LLC,
A Minnesota limited liability company

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of Saturday Zenith LLC, a Minnesota limited liability company, for and on behalf of the company.

Notary Public

This instrument was drafted by:

Robert Asleson
Attorney for the Duluth Economic
Development Authority
410 City Hall
Duluth, MN 55802
(218) 730-5490

PROPERTY DESCRIPTION

Real property in the City of Duluth, County of St. Louis, State of Minnesota, described as follows:

Parcel 1:

Tract 1:

Lots 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, East Third Street, Duluth Proper, First Division.
(Abstract Property)

Tract 2:

Lot 22, East Third Street, Duluth Proper First Division.
(Torrens Property-Certificate of Title 34559.0)

Tract 3:

The Alley Vacated by Judgment recorded July 12, 1881, in Book A of Misc., Page 261, more particularly described as follows:

All that portion of the alley situated in Duluth Proper First Division, lying between the Easterly line of Lake Avenue and the Westerly line of First Avenue East and between East Second Street and East Third Street.

(Abstract Property)

Parcel 2:

Southerly 95 feet of Lots 2 and 4, and all of Lot 6, West Third Street, Duluth Proper, First Division;

(Abstract Property)

AND

All that part of Lots 2 and 4 on West Third Street, Duluth Proper, First Division, that lies within 45 feet of the Southerly line of West Third Street.

(Torrens Property-Certificate of Title 49301.0)

Parcel 3:

Lots 1, 3, 5, 7, 9, 11, 13, 15, East Second Street, Duluth Proper, First Division.

(Abstract Property)

Parcel 4:

The Northwestern fifty feet (NWly 50') of Lots Seventeen (17) and Nineteen (19), East Second Street, Duluth Proper, First Division, more specifically described as follows:

All that part of Lots Seventeen (17) and Nineteen (19), East Second Street, Duluth Proper, First Division lying between the two following lines:

(a) The center line of the alley northwesterly of and abutting said lots;

(b) A line parallel to said center line of said alley and sixty feet (60') southeasterly thereof,

All according to the plat thereof on file and of record in the office of the County Recorder, in and for St. Louis County, Minnesota.

(Abstract Property)

Exhibit C

Zenith Historic Old Central High School

Exhibit A- Eligible Costs

1. Land / Building Acquisition	\$3,000,000
2. Environmental, Radon & lead based paint	\$400,000
3. Utilities	\$303,170
Total:	\$3,703,170

**TIF proceeds = Up to \$2,940,000*

Zenith Historic Old Central High School

Exhibit B- Project Costs

Central High - Duluth

SOURCE & USE OF FUNDS

USES OF FUNDS	Total	%
Land Acquisition Costs		
Purchase Price - Net of Asbestos Escrow	3,000,000	6.89%
Total Acquisition Costs	\$ 3,000,000	6.89%
Soft Costs (Construction)		
Environmental Reports & Oversight	\$ 75,000	0.17%
Architecture & Engineering	\$ 1,065,309	2.45%
City Fees- Planning & Zoning	\$ 15,000	0.03%
Civil/Survey/Plat	\$ 45,000	0.10%
Owner Legal	\$ 400,000	0.92%
Historic Consultant	\$ 45,000	0.10%
Historic App Fees	\$ 15,000	0.03%
Cost Cert	\$ 50,000	0.11%
Developer Fee	\$ 3,173,000	7.28%
CM Fee	\$ 1,493,949	3.43%
Start Up Costs- Operations	\$ 61,000	0.14%
Real Estate Taxes Paid During Construction	\$ 108,210	0.25%
First 6-Month Insurance Premium	\$ 15,250	0.04%
Working Capital Reserve - HUD	\$ 524,400	1.20%
Operating Deficit Reserve - HUD	\$ 979,194	2.25%
Operating Expense Reserve	\$ 390,725	0.90%
LOC Fee	\$ 101,493	0.23%
Title Insurance	\$ 37,760	0.09%
Closing Costs	\$ 11,800	0.03%
Draw Fees	\$ 5,000	0.01%
Mortgage Registration Tax	\$ 62,928	0.14%
Mortgage Recording Fee	\$ 10,488	0.02%
HUD Mortgage Insurance Premium (MIP):	\$ 183,540	0.42%
HUD Exam. Fee:	\$ 52,440	0.12%
HUD Inspection Fee:	\$ 131,100	0.30%
Loan Financing Costs - HUD	\$ 262,200	0.60%
Lender 3rd Parties	\$ 12,000	0.03%
Lender Inspecting Architect	\$ 16,000	0.04%
Lender Legal Fee	\$ 65,000	0.15%
Interest During Construction - 1st	\$ 981,123	2.25%
Lender Due Diligence/Legal - Equity Bridge	\$ 35,000	0.08%
Loan Financing Costs - Equity Bridge	\$ 72,060	0.17%
Interest During Construction - Equity Bridge	\$ 669,401	1.54%
HTC Due Diligence/Legal	\$ 85,000	0.20%
Capitalized HTC Priority Return	\$ 44,320	0.10%
TIF Loan Capitalized Interest	\$ 195,292	0.45%
TIF City Costs	\$ 120,000	0.28%
Total Soft Costs (Construction)	\$ 11,609,981	26.65%
Soft Costs (Marketing)		
FF&E - Housing	\$ 366,000	0.84%
Marketing, Adv., & Promotion - Housing	\$ 244,000	0.56%
Total Soft Costs (Marketing)	\$ 610,000	1.40%
Soft Cost Contingency	\$ 305,500	0.70%
Total Soft Costs	\$ 12,525,480	28.75%
Hard Costs		
City of Duluth - WAC	\$ 303,170	0.70%
City of Duluth - Plan Review Fee	\$ 60,367	0.14%
City of Duluth - Building Permit	\$ 100,127	0.23%
Builders Risk Insurance	\$ 85,354	0.20%
Environmental, Radon & lead based paint	\$ 400,000	0.92%
Construction Costs - Interior	\$ 22,886,845	52.54%
Construction Costs - Exterior	\$ 1,650,000	3.79%
Contingency	\$ 2,548,586	5.85%
Total Hard Costs	\$ 28,034,449	64.36%
TOTAL USES OF FUNDS	\$ 43,559,930	100.00%

Zenith Historic Old Central High School

Exhibit C- Property Description

Real property in the City of Duluth, County of St. Louis, State of Minnesota, described as follows:

Parcel 1:

Tract 1:

Lots 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, East Third Street, Duluth Proper, First Division.

(Abstract Property)

Tract 2:

Lot 22, East Third Street, Duluth Proper First Division.

(Torrens Property-Certificate of Title 34559.0)

Tract 3:

The Alley Vacated by Judgment recorded July 12, 1881, in Book A of Misc., Page 261, more particularly described as follows:

All that portion of the alley situated in Duluth Proper First Division, lying between the Easterly line of Lake Avenue and the Westerly line of First Avenue East and between East Second Street and East

Third Street.

(Abstract Property)

Parcel 2:

Southerly 95 feet of Lots 2 and 4, and all of Lot 6, West Third Street, Duluth Proper, First Division;

(Abstract Property)

AND

All that part of Lots 2 and 4 on West Third Street, Duluth Proper, First Division, that lies within 45

feet of the Southerly line of West Third Street.

(Torrens Property-Certificate of Title 49301.0)

Parcel 3:

Lots 1, 3, 5, 7, 9, 11, 13, 15, East Second Street, Duluth Proper, First Division.

(Abstract Property)

Parcel 4:

The Northwesterly fifty feet (NWly 50') of Lots Seventeen (17) and Nineteen (19), East Second Street, Duluth Proper, First Division, more specifically described as follows:

All that part of Lots Seventeen (17) and Nineteen (19), East Section Street, Duluth Proper, First Division lying between the two following lines:

(a) The center line of the alley northwesterly of and abutting said lots;

(b) A line parallel to said center line of said alley and sixty feet (60') southeasterly thereof, all according to the plat thereof on file and of record in the office of the County Recorder, in and for St. Louis County, Minnesota.

(Abstract Property)

Zenith Historic Old Central High School

Exhibit D- TIF Note

Principal Amount

Annual Rate

\$ _____

4.00%

UNITED STATES OF AMERICA

STATE OF MINNESOTA

COUNTY OF ST. LOUIS

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

TAX INCREMENT FINANCING (TIF) REVENUE NOTE

(ZENITH HISTORIC OLD CENTRAL HIGH SCHOOL REDEVELOPMENT)

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 SATURDAY ZENITH, LLC, a Minnesota limited liability company (the “Developer”), or its registered assigns (the “Registered Owner”), the principal amount of \$ _____ and ____/100th Dollars (\$ _____), which is the amount determined in Paragraph A of Article VIII of that certain Development Agreement between DEDA and the Developer dated _____, 2021, and bearing DEDA Contract No. _____, 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. The principal amount of this TIF Note, as adjusted above, shall bear interest at the annual rate specified above and interest shall start to accrue as of the date of execution of this TIF Note. 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 on August 1, 2023, to and including February 1, 2049, 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, 2049; (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 §§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

Zenith Historic Old Central High School
Exhibit E- Community Benefits Requirements

**Memorandum of Understanding
Regarding The
COMMUNITY BENEFITS PROGRAM**

As it applies to the _____ Project

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this ____ day of _____, 20__ between the City of Duluth through its Workforce Development Department, (the “City”), _____, (the “Developer”), and _____, (the “Contractor”) for the purpose of memorializing the commitments between the parties to implement the City’s Community Benefits Program (the “Program”) as hereinafter set forth in conjunction with the construction of the _____ Project. The Developer is the developer of the Project and the Contractor is a contractor under contract with the Developer to perform work on the Project. The [(City)(Duluth Economic Development Authority (“DEDA”))] is providing financial assistance to the Project.

The City has determined that it is critical to the economic vitality of the City and its citizens that construction projects receiving City or DEDA support commit to assisting in developing a diverse, trained and skilled workforce. In acknowledgement of this goal, the City, the Developer, and the Contractor agree to use their best efforts to implement the Program as hereinafter set forth in this MOU and to cooperate fully with the City’s Workforce Development Department to so implement the Program. Further Contractor agrees to require any subcontractor of Contractor working on the Project covered by this MOU to so use their best efforts to implement the Program.

I. Definitions

For the purposes of this MOU, the following terms shall have the meanings hereinafter ascribed to them:

- A. Best Efforts: shall mean such efforts as are reasonable in light of the Contractor's ability and the means at its disposal.
- B. Best Efforts Plan: shall mean a plan developed and approved between the Contractor and the Workforce Development Department to implement the Contractor's Best Efforts obligations under this MOU.
- C. Contractor: shall mean the Contractor named above performing work on the Project, and all of its Subcontractors.
- D. Eligible Workers: shall refer to women, people of color, and other individuals who are considered socially disadvantaged, and whose work hours on the Project shall count toward the Community Benefits Goal outlined in this MOU. An individual who falls within one or more of the following federally protected classes or who has one or more of the following characteristics shall be considered an Eligible Worker:

Federally protected classes:

- Woman;
- Person of color;
- Has a disability;
- Veteran.

Other Eligible Worker Characteristics:

- Is currently homeless;
- Has received public assistance of any kind within the last 12 months;
- Has a criminal record of conviction;
- Is currently in, or has been emancipated from, the public foster care system;
- Is a disadvantaged or at-risk youth, as defined by the Workforce Investment and Opportunity Act (WIOA), between the ages of 18 and 24;
- Has a disability, including disabled veterans;
- Has a household income below 200% of Federal Poverty Level.

- E. Program: shall mean the Community Benefits Program as set forth in this MOU.

- F. Project: shall mean the construction of the _____ Project as approved by the [(City)(Duluth Economic Development Authority)] by its Resolution No. _____ on _____, 20__.
- G. Subcontractors: shall mean all subcontractors of Contractor of whatever tier engaged in on-site work on the Project covered by this Agreement.
- H. Work Hours: shall mean the total number of hours of construction trade work performed on the Project by Eligible Workers, which work is of a type or character commonly performed by members of labor unions which are affiliated with the Duluth Building and Construction Trades Council or similar regional Councils within Minnesota.

II PROGRAM GOALS

All Contractors entering into contracts for the Project will use their best efforts, as described below, in the performance of those contracts to attain the following Program goals:

- A. Eligible Worker - General:

For the Project, the Contractor shall use its best efforts to cause fifteen percent (15%) of total hours of work performed with respect to the Project to be Work Hours performed by Eligible Workers.

- B. Women

One-half of Work Hours as defined herein shall be performed by Eligible Workers who are women.

III DEVELOPER AND CONTRACTOR—BEST EFFORT

- A. Plan

Within Thirty (30) days of the date the Contractor executes a contract for the Project or prior to commencement of work on the Project by the Contractor, whichever is earlier, Contractor shall have agreed with the Workforce Development Department to a Best Efforts Plan for achieving the Program Goals set forth in Section II above for the construction of the Project. The Contractor shall not commence construction of the Project unless the required Best Efforts Plan has been approved by the Workforce Development Department. The Best Efforts Plan shall include ongoing

effect lasting beyond Project completion. The Best Efforts Plan may include but shall not be limited to the following commitments by the Contractor:

1. To participate in local job fairs and hiring events, including those at high schools, those organized by CareerForce and other partner organizations, , and those organized by community and technical colleges.
2. To proactively work with the Workforce Development Department and partner organizations it has identified, as well as with unions with which the Contractor has agreements, to sponsor new Eligible Workers into such union's apprenticeship programs.
3. To proactively work with CareerForce, Native American tribes and appropriate community organizations to recruit and retain Eligible Workers.
4. To support and actively participate in local apprenticeship exploration programs and other construction career training opportunities.
5. To actively participate in the Duluth Workforce Development Board's Construction Working Group, and in its various initiatives to expand the involvement of Eligible Workers in our region's construction workforce.
6. To develop and implement efforts to retain and support advancement of Eligible Workers in the Contractor's company.
7. To develop and implement company policies and processes to facilitate reporting and resolution of discrimination, harassment, or bias complaints.
8. To require the Contractor's Subcontractors to join with and cooperate fully with Contractor in the implementation of the Contractor's Best Efforts Plan.
9. To take such other actions as is reasonably agreed between Contactor and the Workforce Development Department that will encourage participation of Eligible Workers in the construction of Project, while not adding cost to the Project.
10. To take, and to require its Subcontractors to take, appropriate corrective action when notified by the Workforce Development Department that its Program efforts have failed to meet the Best Efforts requirements of the Program.

B. Reporting

1. Monthly Reporting

No later than Thirty (30) days following the end of the month in which Work Hours are performed on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project in the prior month, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. In determining the identity of Eligible Workers, Contractors and Subcontractors may use then-current lists of Eligible Workers certified by the Workforce Development Department or self-attestation forms signed by Eligible Workers collected by the Contractor or Subcontractor and provided to the Workforce Development Department, or a combination thereof.

2. Completion Report

No later than Sixty (60) days following the end of completion of construction on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project from commencement of construction to its completion, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. Eligible Workers shall be certified as provided for in subparagraph 1 of Paragraph B above. In addition, if the Completion Report establishes that the Program Goals have not been met, the Completion Report shall set forth in detail all efforts actually effectuated to implement the Best Efforts Plan and may set forth any

explanations or extenuating circumstances for not having met the Program Goals.

IV. CITY-PROGRAM OBLIGATIONS

As they pertain to the implementation of the Program, the City, through its Workforce Development Department, shall:

- A. Work with and assist Contractor and all Subcontractors in developing the Best Efforts Plan for the Project covered by this Agreement.
- B. Promptly review and approve the Best Efforts Plan as and when appropriate.
- C. Actively recruit potential Eligible Workers to enter into the building and construction trades and to participate in educational and training programs aimed at making them employable in said trades.
- D. Work with and collaborate with educational institutions, community partners and apprenticeship programs to build accessible pathways into employment in the building and construction trades and assist in resolving barriers which might inhibit the availability of employment in such trades to Disadvantaged Workers.
- E. Receive and review the Monthly Reports referred to in Subparagraph 1 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that is not meeting the Best Efforts requirements of the Program of any deficiency and collaborate on identification of steps that such Contractor or Subcontractor can perform to address the deficiency.
- F. Receive and review the Completion Reports referred to in Subparagraph 2 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that has not met the Best Efforts requirements of the Program of that deficiency. Document and report any explanations or extenuating circumstances provided by Contractor or any Subcontractor for not having met the Program Goals.

CITY OF DULUTH, by its Workforce Development Department

By: _____

Its Director

_____(Insert Developer Name)

By: _____

Its: _____

_____(Insert Contractor Name)

By: _____

Its: _____

EXHIBIT F

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2021, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and SATURDAY ZENITH, LLC, a Minnesota limited liability company (“Developer”), entered into a Development Agreement, which agreement was recorded in the Office of the St. Louis County Registrar of Title on _____, 2021, as Document No. _____ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described in the attached Exhibit A (the “Property”).

B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.

C. Paragraph D of Article V of the Development Agreement provides that a Certificate of Completion be issued by DEDA’s Executive Director upon, among other things, completion by Developer of the construction of the Project in accordance with the Development Agreement.

D. Developer has completed construction of the Project in a manner deemed sufficient by DEDA to permit execution and recording of this Certificate of Completion.

NOW, THEREFORE:

1. Construction of the Project required to be performed by Developer pursuant to the Development Agreement with respect to the Property, has been completed, and those requirements under the Development Agreement which relate solely to construction obligations of the Project have been fulfilled, but all other conditions and restrictions contained in the Development Agreement shall remain in effect.

2. The Registrar of Titles in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.

CERTIFICATE OF COMPLETION

EXHIBIT A

Legal Description of Property

That real property legally described as follows:

Parcel 1:

Tract 1:

Lots 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, East Third Street, Duluth Proper, First Division.

(Abstract Property)

Tract 2:

Lot 22, East Third Street, Duluth Proper First Division.

(Torrens Property-Certificate of Title 34559.0)

Tract 3:

The Alley Vacated by Judgment recorded July 12, 1881, in Book A of Misc., Page 261, more particularly described as follows:

All that portion of the alley situated in Duluth Proper First Division, lying between the Easterly line of Lake Avenue and the Westerly line of First Avenue East and between East Second Street and East

Third Street.

(Abstract Property)

Parcel 2:

Southerly 95 feet of Lots 2 and 4, and all of Lot 6, West Third Street, Duluth Proper, First Division;

(Abstract Property)

AND

All that part of Lots 2 and 4 on West Third Street, Duluth Proper, First Division, that lies within 45

feet of the Southerly line of West Third Street.

(Torrens Property-Certificate of Title 49301.0)

Parcel 3:

Lots 1, 3, 5, 7, 9, 11, 13, 15, East Second Street, Duluth Proper, First Division.

(Abstract Property)

Parcel 4:

The Northwestern fifty feet (NWly 50') of Lots Seventeen (17) and Nineteen (19), East Second Street, Duluth Proper, First Division, more specifically described as follows:

All that part of Lots Seventeen (17) and Nineteen (19), East Section Street, Duluth Proper, First Division lying between the two following lines:

(a) The center line of the alley northwesterly of and abutting said lots;

(b) A line parallel to said center line of said alley and sixty feet (60') southeasterly thereof, all according to the plat thereof on file and of record in the office of the County Recorder, in and for St. Louis County, Minnesota.

(Abstract Property)z

CITY OF DULUTH PROJECT LABOR AGREEMENT

ARTICLE I PURPOSE

This Agreement is entered into as of the date of attestation by the City Clerk, by and between Click or tap here to enter text., its successors or assigns (hereinafter “Project Contractor”), and the City of Duluth, (hereinafter “Owner”¹) and the Duluth Building and Construction Trade Council, on behalf of its affiliated local unions, acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement (hereinafter collectively called the “Union or Unions”), with respect to the construction of the Click or tap here to enter text. (hereinafter “Project”).

The term “Contractor” shall include all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to Click or tap here to enter text. alone is intended, the term “Project Contractor” is used.

The parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to establish a framework for labor-management cooperation and stability. The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craft workers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

¹ Where the work is performed under Contract with the City of Duluth, the “Owner” is the City of Duluth. Where the Owner receives financial assistance or payment from the City, the Owner is the corporation, firm or other entity that is receiving the assistance or payment.

ARTICLE II
SCOPE OF AGREEMENT

Section 1. This Project Labor Agreement shall apply and is limited to all construction work included in all bid categories for the Project under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: [Click or tap here to enter text.](#)

Section 2. It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement to accept and be bound by the terms and conditions of this Project Labor Agreement by executing the "Agreement to be Bound" form attached as Exhibit 1 prior to commencing work. This Project Labor Agreement is a material term of the bid specifications for the Project and therefore, regardless of whether a contractor executes this Agreement, by virtue of the owner and/or Project Contractor accepting the bid offer of the Contractor, a Contractor who performs work on this project is bound to this PLA regardless of their execution of this Agreement. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, The National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article V, VI and VII of this Project Labor Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor the Contractors will be obligated to sign any other local, area or national agreement.

Section 3. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 4. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 5. The Owner and/or Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 6. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Labor Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are

directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

Section 9. The provisions of this Project Labor Agreement shall apply to all craft employees represented by any Union listed in Schedule A hereto attached and shall not apply to other field personnel or managerial or supervisor employees as defined by the National Labor Relations Act. No Contractor party is required to sign any other agreement as a condition of performing work within the scope of this Agreement. However, any Contractor performing work on the Project which is not party to a Local Area Labor Agreement for a craft employed by the Contractor, agrees to install hourly wage rates, hours, fringe benefit contributions, referral procedures and all other terms and conditions of employment as fully set forth in the applicable Local Area Agreement as described in Schedule A for work on the Project for each craft employed by the Contractor. But in no event shall the wages be less than the wages that are applicable to this project under the Minnesota Prevailing Wage Act, Minn. Stat. § 177.43. All employees covered by this Agreement shall be classified in accordance with the work performed. Nothing in this Agreement requires employees to join a union or pay dues or fees to a union as a condition of working on the covered project. This Agreement is not, however, intended to supersede independent requirements in applicable local union agreements as to contractors that are otherwise signatory to those agreements and as to employees of such employers performing covered work.

Section 10. The Contractors agree to timely pay contributions to the established employee benefit funds in the amounts designated in the Local Area Labor Agreements attached as Schedule A.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

Section 11. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, ready mix, asphalt or other similar material and all workers removing any materials from the construction site shall receive a total package of wages and benefits at least and not lower than the wages and benefits provided for in the then current Highway, Heavy Construction Agreement between Teamsters Local 346 and the Associated General Contractors of America, or the Highway Heavy Prevailing Wage Schedule, whichever is greater.

ARTICLE III
UNION RECOGNITION AND UNION SECURITY

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives comply fully with the posted visitor and security and safety rules of the Project.

ARTICLE IV
REFERRAL OF EMPLOYEES

Applicants for the various classifications covered by this Agreement required by the Employer or Contractors on the Project shall be referred to the Contractors by the Unions. The Unions represent that its local unions administer and control their referrals and it is agreed that these referrals will be made in a non-discriminatory manner and in full compliance with Federal and State laws.

ARTICLE V
MANAGEMENT'S RIGHTS

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement or the applicable local area agreements, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause.

ARTICLE VI
WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Unions or by any employee, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site or any site of a contractor or supplier necessary for the performance of work at the project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than thirty (30) days.

Section 3. The Unions shall not be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and

use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

Section 4. Any party alleging a breach of this Article shall have the right to petition a court for temporary and permanent injunctive relief. The parties agree that the moving party, upon proving a breach of this Agreement, shall be entitled to temporary and permanent injunctive relief.

ARTICLE VII **SAFETY**

The parties are mutually committed to promoting a safe working environment for all personnel at the job site. It shall be the responsibility of each employer to which this PLA applies to provide and maintain safe working conditions for its employees, and to comply with all applicable federal, state and local health and safety laws and regulations.

ARTICLE VIII **UNION-MANAGEMENT COOPERATION COMMITTEE**

The parties to this Agreement agree to form a Union-Management Committee, consisting of signatory unions, contractors, and representatives of the City of Duluth. The purpose of the Committee is to ensure cooperation on matters of mutual concern, including productivity, quality of work, safety and health.

ARTICLE IX **DISPUTES AND GRIEVANCES**

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually realize the importance to all parties to maintain continuous and uninterrupted performance of the work on the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Labor Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When an employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after the occurrence of the violation, or knowledge of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated. The

business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within seven (7) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager or his or her designee of a Local Union and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) neutral arbitrators from which the Arbitrator shall be selected. The parties shall alternatively strike arbitrators from the list until one remains, who shall preside at the hearing. The party striking first shall be determined by the flip of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE X **JURISDICTIONAL DISPUTES**

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

ARTICLE XI **SUBCONTRACTING**

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

ARTICLE XII **HELMETS TO HARDHATS**

Section 1. The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XIII **LABOR HARMONY CLAUSE**

The contractor shall furnish labor that can work in harmony with all other elements of labor employed on the Project and shall submit a labor harmony plan to demonstrate how this will be done. "Harmony" shall include the provision of labor that will not, either directly or indirectly, cause or

give rise to any work disruptions, slowdowns, picketing, stoppages, or any violence or harm to any person or property while performing any work, or activities incidental thereto at the Project. The labor harmony plan should include the company's labor management policies, collective bargaining agreements if any and their expiration dates, past labor relations history, a listing of activities anticipated under this contract that may potentially cause friction with on-site workers, and procedures the company will undertake to eliminate this friction.

The contractor agrees that it shall require every lower-tier subcontractor to provide labor that will work in harmony with all other elements of labor employed in the work, and will include the provisions contained in the paragraph above, in every lower-tier subcontract let for work under this contract.

The requirement to provide labor that can work in harmony with all other elements of labor employed in the work throughout the contract performance is a material element of this contract. Failure by the contractor or any of its lower-tier subcontractors to comply with this requirement shall be deemed a material breach of the contract which will subject the contractor to all rights and remedies the Owner or Project Contractor may have, including without limitation the right to terminate the contract.

ARTICLE XIV
NO DISCRIMINATION

Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of his or her membership or non-membership in a Union or based upon race, color, religion, sexual preference, gender identification, national origin or age in any manner prohibited by law or regulation.

Section 2. Any complaints regarding application of the provisions of Section 1, should be brought to the immediate attention of the involved Contractor for consideration and resolution.

Section 3. The use of the masculine or feminine gender in this Agreement shall be construed as including all gender identification.

ARTICLE XV
SAVINGS AND SEPARABILITY

It is not the intention of the parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Contractor and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE XVI
DURATION OF THE AGREEMENT

The Project Labor Agreement shall continue in effect for the duration of the Project construction work described in Article II hereof. Construction of any phase, portion, section or segment of the project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Since there are provisions herein for no strikes or lockouts in the event any changes are negotiated and implemented under a Local Area Agreement during the term of this Agreement, the Contractor agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date in the particular Local Agreement involved. Each Contractor which has a Local Agreement with a Union at the time that its contract at the project commences shall continue it in effect with each said Union so long as the Contractor remains on the project. In the event any such Local Area Agreement expires, the Contractor shall abide by all of the terms of the expired Local Agreement until agreement is reached on a new Local Agreement, with any changes being subject to the provisions of this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiation of a Local Area Agreement nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

[The remainder of this page intentionally left blank. Signature page to follow].

TEMPLATE

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

DULUTH BUILDING AND
CONSTRUCTION TRADES COUNCIL

Click or tap here to enter text.

By: _____

By: _____

Its: _____
(Printed Name/Title)

Its: _____
(Printed Name/Title)

Date: _____

Date: _____

Phone No.: _____

CITY OF DULUTH

By: _____
Mayor

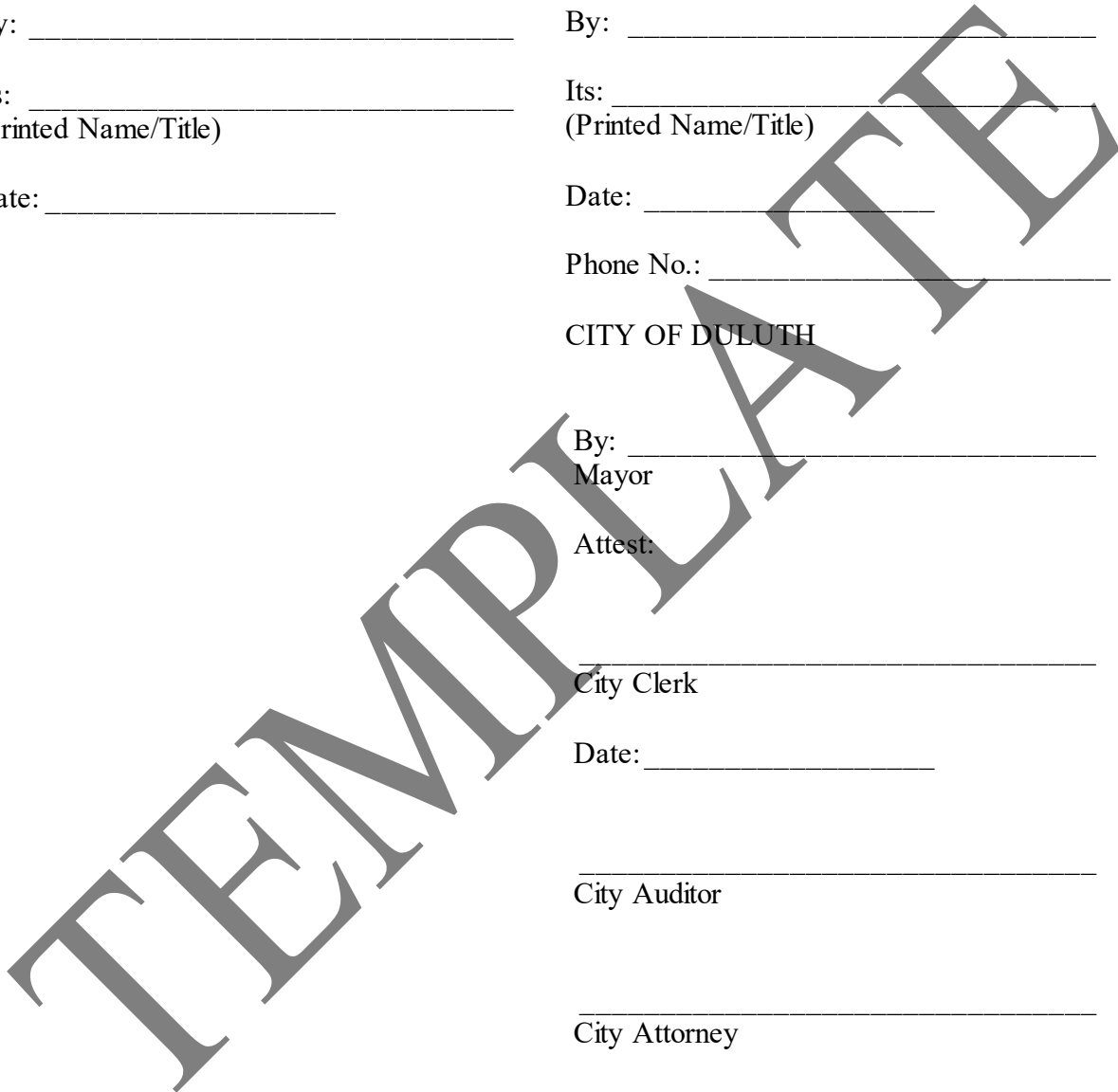
Attest:

City Clerk

Date: _____

City Auditor

City Attorney



**SUBCONTRACTOR'S
AGREEMENT TO BE BOUND
PROJECT LABOR AGREEMENT**

The undersigned EMPLOYER (subcontractor) agrees that it has reviewed a copy of the Project Labor Agreement for the _____ Project located in Duluth, Minnesota, with the Duluth Building & Construction Trades Council and further agrees to become a party to and bound to the foregoing Agreement.

This form is to be completed by subcontractor and submitted to the Project Contractor. Project Contractor shall retain and submit to City of Duluth or Duluth Building & Construction Trades Council upon request.

Attest:

SIGNED FOR THE EMPLOYER:

Dated: _____

Signature

Company Name

Company Address

Phone No., Job Site and/or Office

Fax No.

Signer's Name

Signer's Title

SCHEDULE "A"

For a copy of the current Local Area Collective Bargaining Agreement referenced in Article II, Section 9 of the PLA please contact directly the Local Union representing the craft for the work to be performed (see attached contact list) or contact the Duluth Building & Construction Trades Council.

- A-1 Asbestos Workers Local 49
- A-2 Boilermakers Local 647
- A-3 BAC Local 1 Chapter 3 Duluth and Iron Range
- A-4 Carpenters Local 361
- A-5 Cement Masons/Plasters Local 633
- A-6 Elevator Constructors Local 9
- A-7 IBEW Local 242
- A-8 Iron Workers Local 512
- A-9 Laborers Local 1091
- A-10 Millwrights Local 1348
- A-11 Operating Engineers Local 49
- A-12 Painters & Allied Trades Local 106
- A-13 Plumbers & Fitters Local 11
- A-14 Roofers Local 96
- A-15 Sheet Metal Workers Local 10
- A-16 Sprinkler Fitters Local 669
- A-17 Teamsters Local 346

Affiliated AFL-CIO

DULUTH BUILDING AND CONSTRUCTION TRADES COUNCIL

2002 LONDON ROAD

LABOR CENTER

DULUTH, MINN. 55812



Officers

Craig Olson

President

Darrell Godbout

Vice President

Dan Olson

Secretary

Jeff Daveau

Treasurer

Boilermakers #647

Bricklayers #1

Carpenters #361

Cement Masons #633

Elevator #9

IBEW #242

Insulators #49

Ironworkers #512

Laborers #1091

Millrights #1348

Operators #49

Painters #106

Pipefitters #11

Roofers #96

Sheetmetal #10

Sprinklerfitters #669

Teamsters #346

ASBESTOS WORKERS LOCAL 49

Dave Cartwright

2002 London Road #210

Duluth, MN 55812

(218) 724-3223 / Fax# 724-1870

dave@insulatorslocal49.org

CARPENTERS LOCAL 361

Chris Hill

5238 Miller Trunk Hwy

Hermantown, MN 55811

(218) 724-3297 / Fax# 724-8536

chill@ncsrcc.org

IBEW LOCAL 242

Don Smith

2002 London Road #111

Duluth, MN 55812

(218) 728-6895 / Fax# 728-1965

dsmith1242@unions-america.com

MILLRIGHTS & MACHINERY ERECTORS LOCAL 1348

Wayne Nordin

726 4th Street N

Virginia, MN 55792

(218) 741-6314 / Fax# 741-6017

wnordin@ncsrcc.org

PLUMBERS & FITTERS LOCAL 11

Jeff Daveau, *Treasurer*

4402 Airpark Boulevard

Duluth, MN 55811

(218) 727-2199 / Fax# 727-2298

jeff@ualocal11.com

SPRINKLER FITTERS LOCAL 669

James Westby

PO Box 398

Mabel, MN 55954

(507) 493-5671 / Fax# 493-5481

westby@mabeltel.com

BOILERMAKERS LOCAL 647

Bill Polchow

1007 NW 4th Street, Ste C

Grand Rapids, MN 55744

(218) 326-2522 / Fax# SAME

bpolchow647@outlook.com

CEMENT MASONS LOCAL 633

Michael Syversrud

2002 London Road #112

Duluth, MN 55812

(218) 724-2323 / Fax# 724-2472

mikes@local633.org

IRON WORKERS LOCAL 512

Darrell Godbout, *Vice President*

3752 Midway Road

Hermantown, MN 55810

(218) 724-5073 / Fax# 724-1525

darrell@iron512.com

OPERATING ENGINEERS LOCAL 49

Eric Gulland & Mike Parrott

2002 London Road #116

Duluth, MN 55812

(218) 724-3840 / Fax# 728-1441

egulland@local49.org

mwparrotta@local49.org

ROOFERS LOCAL 96

Vance Anderson

1145 Villa Vista Circle

Cromwell MN 55726

(218) 644-1096 / Fax# SAME

valocal96@yahoo.com

TEAMSTERS LOCAL 346

Rod Ainstead

2802 West 1st Street

Duluth, MN 55806

(218) 628-1034 / Fax# 628-0246

local@teamsters346.com

BAC LOCAL #1 CHAPTER 3 DULUTH & IRON RANGE

Stan (Ogie) Paczynski

2002 London Road #100

Duluth, MN 55812

(218) 724-8374 / Fax# 724-8341

spaczynski@baclmn-nd.org

ELEVATOR CONSTRUCTORS LOCAL 9

Dave Aaserud

433 Little Canada Rd E

Little Canada, MN 55117

(651) 287-0817 / Fax# 287-0820

d.aaserud@local9.com

LABORERS LOCAL 1091

Dan Olson, *Secretary*

2002 London Road #119

Duluth, MN 55812

(218) 728-5151 / Fax# 728-2431

laborers@local1091.com

PAINTERS LOCAL 106

Craig Olson, *President*

2002 London Road #106

Duluth, MN 55812

(218) 724-6466 / Fax# 724-7359

president@duluthbuildingtrades.com

valocal96@yahoo.com

SHEET METAL WORKERS LOCAL 10

Doug Christy

6279 Industrial Road

Saginaw, MN 55779

(218) 724-6873 / Fax# SAME

dchristy@smw10.org

RESOLUTION 21D-27

**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 by other electronic means pursuant to Minnesota Statutes Section 13D.021, at or shortly after 5:15 p.m. on July 28, 2021, 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 Thomas Jovanovich:

N 31 FT OF S 60 FT OF LOTS 1 2 3 4 AND 4 ½, Block 189, WEST
DULUTH 7th DIVISION St. Louis County, Minnesota

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 28th day of July, 2021.

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 Hughes Olson Workshop as part of the Rebuild Duluth Program. Hughes Olson Workshop executed a Sale Agreement with DEDA in 2020 for property located in the Fairmount neighborhood, but due to boundary line issues, the project was rendered impossible at the previous site. That site will be returned to DEDA prior to conveyance of the subject property. Given the funding is secured and the contractor is ready to commence with the project, staff proposes use of this DEDA-owned site as a substitute.

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 has submitted an application (the "Application") to acquire the hereinafter-described vacant Property and has proposed to construct thereon a Housing Unit conforming substantially to that shown on the plans and specifications appended to the Application (the "Application Plans") at an estimated total construction cost of \$199,900.00 (the "Application Project Cost"); and

WHEREAS, DEDA has determined that the conveyance of said Property to Buyer for construction of a Housing Unit on the Property under the terms and conditions set forth in the Application and 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. Conveyance of Property

Subject to the terms and conditions of this Agreement, DEDA will convey to Buyer and Buyer will acquire from DEDA, by quitclaim deed at no cost to Buyer except as set forth herein, real property located in St. Louis County, Minnesota and legally described as follows:

N 31 FT OF S 60 FT OF LOTS 1 2 3 4 AND 4 ½, Block 189, WEST DULUTH
7th DIVISION St. Louis County, Minnesota

together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the "Property").

3. Use of the Property

Buyer agrees to construct a Housing Unit substantially in conformance with the Application Plans for a cost not in excess of the Application Project Cost except as provided for below pursuant to the Application and in accordance with the requirements of the Program (the "Project").

4. Inspection and Due Diligence 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. Any Site Inspections activities that constitute earth-disturbing activities, including but not limited to soil boring, excavation or earth removal shall be subject to the prior written approval of DEDA's Executive Director or his designee (the "Executive Director"). Under no circumstances may any unapproved excavation, construction site-disturbing activities or storage of materials or equipment occur on the Property prior to Closing (defined below). Additionally, Buyer shall use the

Inspection Period to obtain all construction cost and site-information necessary to finance the Project prior to Closing (defined below).

Buyer agrees 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 any lien against the Property in relation to the Site Inspections. Buyer shall restore the Property to its condition as of the effective date of this Agreement prior to the end of the Inspection Period. If Buyer fails to restore the Property, DEDA may itself cause the Property to be so restored and Buyer agrees to fully reimburse DEDA for the cost thereof; this obligation shall survive the termination of this Agreement as applicable. 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

Within 15 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 "marketable", 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 waive any such title objection or 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

No later than 15 days following the Inspection Period, Buyer shall deliver to the Executive Director complete plans and specifications for the Project including working drawings, construction specifications, landscaping plans, elevations and floorplans in a form acceptable to the Executive Director in his sole discretion (the "Plans and Specifications"). The Plans and Specifications shall conform substantially to the Application Plans except as approved by the Executive Director. The Plans and Specifications shall be subject to the written approval of the Executive Director. In the event of any proposed 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. Upon approval by the Executive Director of the Plans and Specifications for the Project, Buyer shall provide a Copyright Release to the Executive Director in the form of that attached hereto as Exhibit A.

7. Submittal of Cost

No later than 15 days following the Inspection Period, Buyer shall submit to DEDA in writing a certified bid and/or a construction contract from a licensed contractor committing to construct the Project in conformance with the Plans and Specifications and stating the total cost thereof (the "Total Project Cost"). In the event the Total Project Cost is 25% or more over the Application Project Cost, 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 from Buyer and has approved the Plans and Specifications, the evidence of Total Project Cost as required in Section 7 above, and evidence that a building permit application has been conditionally approved by the City's Construction Services and Inspections Division for the construction of the Project, ii) concurrent with or after 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 December 31, 2021 (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 the Total Project Cost. Additionally, Buyer agrees to provide DEDA staff with sworn construction statements or final pricing from a licensed contractor showing that the Project complies with Program requirements and the Plans and Specifications and did not cost more than the Total Project Cost. 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 in conformance with the above requirements, 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 commenced construction on the Project in accordance with the requirements of this Agreement and have filed an affidavit with the Executive Director, executed by Buyer, to which are attached pictures of commenced construction.

On or before December 31, 2022, Buyer shall provide the Executive Director (i) evidence of completion of construction of the Housing Unit in accordance with the requirements of this Agreement and the Plans and Specifications; and (ii) evidence of

the issuance of the Certificate of Occupancy. If Buyer fails to meet either the one-year deadline or the December 31, 2022 deadline as stated above, DEDA may, but shall not be obligated to, cancel the sale and title to the Property shall revert to DEDA.

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 is experienced in and knowledgeable about the development of real estate and has exclusively relied on its own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the Property, its condition, value and potential. The conveyance of the Property to 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 neither DEDA nor any of its officers, agents, servants, employees or any other person or entity representing or purporting to represent DEDA has made any 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

Any real estate taxes on the Property as of the Closing Date 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 Paragraph 13, 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 Specifications including a license or such other grant of right of use acceptable to the Executive Director in the Plans and Specifications in favor of the City and the general public, 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:

Hughes Olsen Workshop
C/O Benjamin Olsen
2369 Doswell Avenue
St. Paul, Minnesota 55108

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

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

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 subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed this Agreement or their successors in office.

31. Counterparts

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

_____ [Purchaser]

By _____

Its _____

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of _____, a _____, on behalf of the _____.

Notary Public

EXHIBIT A
COPYRIGHT RELEASE

I certify by signing below that I own all legal rights including all rights of use and the copyright on _____ (insert the title shown on the design plans and specifications) dated _____ including all renderings, floorplans, site plans and elevations, submitted to the City of Duluth ("City") by me, my agents or representatives in connection with:

Project: _____
(Name of project)

Located at: _____
(Street address)

I agree to unconditionally transfer and assign to the City all copyright claims, trade secrets or other proprietary rights with respect to the design plans and specifications and other documents and electronic media prepared by me or on my behalf for the Project, and I grant the City the right to publish and to permit use of the same by the public.

I agree that all design plans and specifications and other documents and electronic media prepared by me or on my behalf for the Project are the sole property of the City and its assigns free of any retention rights.

I represent and warrant that the work created or prepared by me or on my behalf 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: _____

Phone: _____

Email: _____

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.

QUITCLAIM DEED

No delinquent taxes and transfer entered;
Certificate of Real Estate () file () not required
Certificate of Real Estate Value No. _____
_____, 2021

County Auditor

STATE DEED TAX DUE HEREON: \$ _____

Date: _____, 2021

FOR VALUABLE CONSIDERATION, the Duluth Economic Development Authority, an economic development authority under Minnesota Statutes Chapter 469, Grantor, hereby conveys and quitclaims to the Hughes Olsen Workshop LLC, a Minnesota limited liability company, Grantee, real property in St. Louis County, Minnesota, described as follows:

N 31 FT OF S 60 FT OF LOTS 1 2 3 4 AND 4 ½, Block 189, WEST DULUTH
7th DIVISION

together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto; 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.

RESOLUTION 21D-28

RESOLUTION APPROVING THE ISSUANCE AND SALE OF HEALTH FACILITIES REVENUE BONDS, SERIES 2021A (ST. LUKE'S HOSPITAL OF DULUTH OBLIGATED GROUP), AND HEALTH FACILITIES REVENUE BONDS, SERIES 2022A (ST. LUKE'S HOSPITAL OF DULUTH 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. 2002 Bonds: the City of Two Harbors, Minnesota Health Care Facilities Revenue Bonds, Series 2002 (Lake View Memorial Hospital Project), which were issued on or about March 1, 2002, in the initial aggregate principal amount of \$4,600,000, the proceeds of which were used to finance the 2002 Project.
 - b. 2002 Project: the (i) construction and equipping of an addition to the Lake View Facilities of approximately 13,300 square feet, (ii) renovation and remodeling of approximately 14,000 square feet of the Lake View Facilities; and (iii) refinancing of prior indebtedness, the proceeds of which were used to finance certain capital improvements to the Lake View Facilities.
 - c. 2003 Note: the City of Two Harbors, Minnesota, Health Care Facilities Revenue Note (Lake View Memorial Hospital Project), Series 2003, which was issued on or about August 25, 2003, in the initial aggregate principal amount of \$6,000,000, the proceeds of which were used to (i) finance the 2003 Project, (ii) currently refund the 2002 Bonds; (iii) currently refund a line of credit, the proceeds of which were used for the acquisition, design, construction, equipping and furnishing of certain capital improvements to the Lake View Facilities; and (iv) pay costs of issuing the 2003 Note.
 - d. 2003 Project: the acquisition, design, construction, equipping and furnishing of certain capital improvements to the facilities of Lake View, generally located at the Lake View Facilities.
 - e. 2012 Bonds: DEDA's Health Care Facilities Revenue Bonds (St. Luke's Hospital of Duluth Obligated Group) Series 2012, which were issued on or about October 10, 2012, in the initial aggregate principal amount of \$81,595,000, the proceeds of which were used to finance the 2012 Project and to currently refund the Series 2002 Bonds.

- f. 2012 Master Indenture: the Amended and Restated Mortgage and Master Trust Indenture dated as of October 1, 2012, between the Borrower, St. Luke's Foundation, Lake View and the Master Trustee, as amended and supplemented in accordance with the provisions thereof prior to the effective date of the 2022 Master Indenture.
- g. 2012 Project: the acquisition of certain real property and the acquisition, design, construction, equipping and furnishing of certain capital improvements to the St. Luke's Campus Facilities.
- h. 2014 Loan: a taxable loan which was made on or about September 23, 2014, to the Borrower from General Electric Capital Corporation, in the initial aggregate principal amount of \$9,975,000, the proceeds of which were used to finance the 2014 Project.
- i. 2014 Project: the design, construction, build out, furnishing and equipping of the surgery department of the Borrower in a medical office building located at 1012 East Second Street in the City, and a generator to service the space used by the Borrower in such building.
- j. 2016 Loan: a taxable loan which was made on or about July 28, 2016, to the Borrower from North Shore Bank of Commerce, in the initial aggregate principal amount of \$4,800,000.
- k. 2016 Project: the design, acquisition, construction, furnishing and equipping of a new medical clinic of approximately 20,275 square feet located at 4190 Loberg Avenue in the City.
- l. 2022 Master Indenture: the Second Amended and Restated Mortgage and Master Trust Indenture to be entered into among the members of the Obligated Group and the Master Trustee on the date that is the later of the date of issue of the Series 2022A Bonds or the date of receipt of the consents required under the Master Indenture. "2022 Master Indenture" shall be deemed to include supplemental indentures authorized thereunder and relating to the Bonds.
- m. Act: Minnesota Statutes, Sections 469.152 through 469.165, as amended.
- n. Assignments: the integral assignment to the Obligated Group Notes to be endorsed by DEDA in favor of the Bond Trustee.
- o. Authorized Officers: the President and Secretary of DEDA, or the deputy or acting designee of either of them.
- p. Board: the Board of Commissioners of DEDA, DEDA's governing body.

- q. Bond Counsel: the law firm of Fryberger, Buchanan, Smith & Frederick, P.A.
- r. Bond Indenture: the Indenture of Trust to be entered into between DEDA and the Bond Trustee.
- s. Bond Purchase Agreements: means the Forward Delivery Agreement and the Series 2021A Bond Purchase Agreement.
- t. Bond Trustee: UMB Bank, National Association, a national banking association with an office located in St. Paul, Minnesota, its successors and assigns.
- u. Bonds: the Series 2021A Bonds and the Series 2022A Bonds.
- v. Borrower: St. Luke's Hospital of Duluth, as Obligated Group Agent on behalf of itself and the other members of the Obligated Group under the Master Indenture, each such entity being (as represented to DEDA), an organization described in Section 501(c)(3) of the Code, the corporate offices of which are located at 915 East First Street in the City.
- w. Borrower Documents: the Loan Agreement, the Master Indenture, the Related Supplement, the Bond Purchase Agreements, the Continuing Disclosure Agreement, the Escrow Agreement, the Obligated Group Notes and the draft Preliminary Official Statement.
- x. City: the City of Duluth, Minnesota.
- y. Code: the Internal Revenue Code of 1986, as amended.
- z. Continuing Disclosure Agreement means that certain Continuing Disclosure Agreement between the Corporation, on behalf of itself and as Obligated Group Agent, and U.S. Bank, National Association, as the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms thereof.
- aa. DEDA: the Duluth Economic Development Authority.
- bb. DEDA Documents: the DEED Application, the Bond Purchase Agreements, Loan Agreement, the Bond Indenture, the Escrow Agreement, and the Assignments, including any separations, division or combinations thereof.
- cc. DEED Application: the application submitted to DEED on behalf of DEDA, requesting approval of the proposal for the refinancing of the 2014 Project and 2016 Project and issuance of the portion of the Series 2021A Bonds refinancing the 2014 Project and 2016 Projects.

- dd. Documents: the DEDA Documents, the Borrower Documents and other documents required for the issuance of the Bonds.
- ee. Escrow Agreement means the Escrow Agreement to be dated the 2022 Settlement Date between the Issuer, the Corporation and U.S. Bank, National Association, as escrow agent.
- ff. Executive Director: the Executive Director of DEDA.
- gg. Final Official Statement: the Preliminary Official Statement completed to show the final terms of the Bonds, including any supplements thereto prepared in connection with the initial issuance of the Bonds.
- hh. Financing Purposes: making a loan to the Borrower for the purposes of refunding the Refunded Obligations and refinancing the Refunded Projects, financing issuance costs of the Bonds and funding debt service reserves for the Bonds.
- ii. Forward Delivery Agreement: the Forward Delivery Bond Purchase Agreement to be entered into among the Issuer, the Borrower and the Underwriter for the Series 2022A Bonds.
- jj. Host Municipality: the City of Two Harbors, Minnesota.
- kk. Lake View Facilities shall mean 1010 Fourth Street and 325 11th Avenue in Two Harbors, Minnesota.
- ll. Loan Agreement: the Loan Agreement to be entered into between DEDA and the Borrower.
- mm. Master Indenture: the 2012 Master Indenture and/or the 2022 Master Indenture, as the context requires.
- nn. Master Trustee: U.S. Bank, National Association, as master trustee under the Master Indenture.
- oo. Obligated Group: a group, as may be modified from time to time as provided for in the Master Indenture, currently composed of the Borrower, St. Luke's Foundation and Lake View Memorial Hospital, Inc., each of which has agreed in writing to be bound by the provisions of the Master Indenture.
- pp. Obligated Group Agent: St. Luke's Hospital of Duluth, as obligated group agent under the Master Indenture.
- qq. Obligated Group Notes: the Series 2021A Note and Series 2022A Note.

- rr. Preliminary Official Statement: the preliminary official statement for the Bonds.
- ss. Projects: the Refunded Projects.
- tt. Refunded Obligations: the Series 2021A Refunded Obligations and the Series 2022A Refunded Bonds.
- uu. Refunded Projects: the 2002 Project, the Series 2002 Project, the 2003 Project, the 2012 Project, the 2014 Project and the 2016 Project.
- vv. Registrar: bond registrar, paying agent, authenticating agent and transfer agent for the Bonds.
- ww. Related Supplement: one or more supplements to the 2012 Master Indenture to be entered into between the Obligated Group and the Master Trustee authorizing the issuance of the Obligated Group Notes all as may be discharged, amended or replaced in connection with the execution of the 2022 Master Indenture.
- xx. Series 2002 Bonds: DEDA's Health Care Facilities Revenue Bonds (St. Luke's Hospital of Duluth Obligated Group), Series 2002, dated as originally issued as of August 1, 2002.
- yy. Series 2002 Project: the financing or refinancing of the acquisition, design, construction, equipping and furnishing of the St. Luke's Campus Facilities.
- zz. Series 2021A Bond Purchase Agreement: the Bond Purchase Agreement to be entered into among the Issuer, the Borrower and the Underwriter.
- aaa. Series 2021A Bonds: DEDA's Health Care Facilities Revenue Bonds (St. Luke's Hospital of Duluth Obligated Group), Series 2021A.
- bbb. Series 2021A Note: the promissory note of the Borrower, as Obligated Group Agent, issued under the Master Indenture and the Related Supplement to DEDA securing payment of the Series 2021A Bonds.
- ccc. Series 2021A Refunded Obligations: that portion of the 2012 Bonds maturing June 15, 2027, with a coupon of 5.125%, the 2003 Note, the 2014 Loan and the 2016 Loan.
- ddd. Series 2022A Bonds: DEDA's Health Care Facilities Revenue Bonds (St. Luke's Hospital of Duluth Obligated Group), Series 2022A.
- eee. Series 2022A Note: the promissory note of the Borrower, as Obligated Group Agent, issued under the Master Indenture and the Related Supplement, to DEDA securing payment of the Series 2022A Bonds.

- fff. Series 2022A Refunded Bonds: that portion of the 2012 Bonds maturing June 15, 2022, June 15, 2027, June 15, 2032 and June 15, 2039, with a 5.75% coupon.
- ggg. Special Tax Counsel: the law firm of Hall, Render, Killian, Heath & Lyman.
- hhh. St. Luke's Campus Facilities: the facilities of the Borrower generally located at 915 East 1st Street, and encompassing a majority of the property bounded by East Superior Street, North 9th Avenue East, East Third Street, and North 12th Avenue East in the City.
- iii. State: the State of Minnesota.
- jjj. 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).
- kkk. Underwriter: J.P. Morgan Securities LLC.

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 Notes, 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 provides the terms and conditions, covenants, rights, obligations, duties and agreements of the owners of the Bonds, DEDA and the Bond Trustee as set forth therein.
- b. In the *Bond Purchase Agreements*, DEDA, the Underwriter and the Borrower approve the final interest rates, maturities and redemption provisions of the Bonds. In addition, in the *Forward Delivery Agreement*, DEDA, the Underwriter and Borrower agree to the terms and conditions of purchase and the forward delivery and issuance of the Series 2022A Bonds on the date described therein.
- c. 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 issuing the Bonds and DEDA's

administrative fee required for DEDA 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, all of which are required or permitted by the Act and which DEDA and the Borrower deem necessary or desirable for refunding the Refunded Obligations.

- d. The *Master Indenture* contains the terms and conditions precedent to the issuance of the Obligated Group Notes, including requirements that must be met for the Obligated Group to incur additional indebtedness and to refund indebtedness.
- e. The *Related Supplement* is authorized under the Master Indenture and is necessary to authorize the issuance of the Obligated Group Notes and to describe the terms of the Obligated Group Notes.
- f. The Series 2021A Bonds are proposed to be secured by the *Series 2021A Note* issued under the Master Indenture. The Series 2022A Bonds are proposed to be secured by the *Series 2022A Note* issued under the Master Indenture. The Obligated Group is jointly and severally liable for payment of all notes issued under the Master Indenture. The *Series 2021A Note* will be issued in a stated principal amount equal to the stated principal amount of the Series 2021A Bonds and will bear interest at the rate or rates payable from time to time on the Series 2021A Bonds. The *Series 2022A Note* will be issued in a stated principal amount equal to the stated principal amount of the Series 2022A Bonds and will bear interest at the rate or rates payable from time to time on the Series 2022A Bonds.
- g. 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 under the Code which allow interest on the Bonds to be excludable from the gross income of the owners of the Bonds for federal income tax purposes.
- h. In the *Continuing Disclosure Agreement*, the Obligated Group Agent agrees to make information on the financial condition and operations of the Obligated Group publicly available through the Municipal Securities Rulemaking Board.
- i. The *Preliminary Official Statement*, when final, must contain all the facts an investor would need to make the decision whether or not to purchase one of the Bonds. Information which may be omitted includes the offering price(s) of the Bonds, interest rate(s) on the Bonds, Underwriter's compensation, aggregate principal amount of the Bonds, principal amount per maturity of the Bonds and closing date. The Final Official Statement is substantially similar to the Preliminary Official Statement, but includes the omitted information.

- j. In the *Escrow Agreement* to be entered into among DEDA, the Borrower and U.S. Bank, National Association, as Escrow Agent (the “Escrow Agent”), a portion of the proceeds of the Series 2022A Bonds will be deposited with the Escrow Agent, and applied with other available funds of the Borrower and funds held by the trustee of the 2012 Bonds for the purpose of defeasing the Series 2022A Refunded Bonds.

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 Projects qualify as a “project” as defined in Sections 469.153, subdivision 2(d) and 469.155, subdivision 4 of the Act.

Section 4. Documents. 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 Proceedings.

- 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 bonds and the proposal to finance and refinance the Projects.
- b. DEDA has, after notice and publication, on July 28, 2021, held a public hearing on the Projects and financing and refinancing thereof, and persons in attendance wishing to speak on the Projects and the financing and refinancing thereof, if any, were given an opportunity to do so at the hearing.

Section 6. Recitals Regarding the Borrower and the Projects.

- 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; and
 - iii. the Host Municipality must consent to the refunding of the 2003 Note and issuance of the Series 2021A Bonds by DEDA to refinance the portion of the Projects located within its jurisdiction.

- 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. The Borrower has represented to DEDA that it and each member of the Obligated Group is an organization described in Section 501(c)(3) of the Code.
- 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.
- e. The Borrower has represented to DEDA that no public official of DEDA has either a direct or indirect financial interest in the Projects nor will any public official either directly or indirectly benefit financially from the Projects.
- f. The Projects, except the 2014 and 2016 Projects, were approved by the Minnesota Department of Employment and Economic Development in conjunction with the issuance of the Refunded Obligations.

Section 7. Findings. The Board finds, determines and declares as follows:

- a. The welfare of the State requires the provision of necessary health care and senior housing facilities so that adequate health care and senior housing 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 Projects will assist DEDA in achieving those objectives; and enhance the image and reputation of the State.
- c. On the basis of information made available to DEDA by the Obligated Group, it appears, and DEDA finds, that: (i) the Projects constitute properties, used or useful in connection with a revenue producing enterprise providing health care services; (ii) the Projects further the purposes stated in the Act; (iii) the Projects would not be undertaken but for the availability of financing and refinancing under the Act and the willingness of DEDA to furnish such financing and refinancing; and (iv) the effect of the Projects, 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 8. Approval of the Projects and the Bonds. The Projects are approved. Issuance of the Bonds for the Financing Purposes in an original aggregate stated principal amount of not to exceed \$90,000,000 (excluding original issue discount or premium with respect to any series of Bonds) is approved and authorized, subject to the following:

- a. The Series 2021A Bonds shall be sold to the Underwriter, subject to satisfaction of the terms of the Series 2021A Bond Purchase Agreement.
- b. The Series 2022A Bonds shall be sold to the Underwriter, subject to satisfaction of the terms of the Forward Delivery Agreement.
- c. The Bonds are to be issued pursuant to the Act and the Bond Indenture. The Borrower is authorized to approve the final interest rate or rates on the Bonds, subject to such adjustment as may be provided for in the Bond Indenture and the Bonds, and upon the terms and conditions specified in this resolution, the Bond Indenture and the Bonds. The Borrower is further authorized to approve the issue and delivery dates of 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. Subject to clause e, below, the Bonds (i) are to be designated (which designation or designations shall supersede any designation or designations contained in Section 1), be dated, be in substantially the form, be signed, be in the denominations, have maturities and be subject to redemption as provided in the Bond Indenture and (ii) will bear interest at rates approved by the Borrower and be described and have such other details and provisions as specified in the Bond Indenture. The Bonds will bear the designations set forth in the Bond Indenture.
- d. The maturity date of any of the Bonds cannot exceed 40 years from the date of closing and delivery of the Bonds.
- e. 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.

- f. The Authorized Officers, with advice of Bond Counsel, 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 9. Approval and Execution of Documents and Certificates.

- a. The DEDA Documents, the endorsement to the Tax Certificate, and the Bonds are made a part of this resolution and are approved in substantially the forms on file with DEDA.
- b. The Authorized Officers (individually or with one or more other officers and members of DEDA) are authorized and directed:
 - i. to execute, acknowledge and deliver the DEDA Documents, the endorsement to the Tax Certificate, and the Bonds on behalf of DEDA with such changes, insertions and omissions therein as DEDA's attorney or Bond Counsel may hereafter approve; provided that the seal of DEDA may be omitted as allowed by law;
 - ii. to execute and deliver all other documents which may be required under the terms of the DEDA Documents or the Bonds or by Bond Counsel;
 - iii. to 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;
 - iv. 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; and
 - v. upon the advice of Bond Counsel, to take such further action, including without limitation holding any additional hearings and coordinating additional approvals, and to execute such additional instruments, as may be required or deemed appropriate at any time in the future in connection with the Bonds and the Projects, including further actions in connection with any refinancing or

reissuance in whole or in part thereof, and in connection with any federal tax law remedial actions related to sales, leases or other dispositions or uses of all or any part of the Projects and related changes to uses and allocations of proceeds of tax-exempt obligations.

- 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 10. Absent or Disabled Officers. If any of the Authorized Officers or any other officers, employees or agents 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; and
- 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 11. Bond Trustee; Bond Registrar; Paying Agent. DEDA appoints the Bond Trustee as trustee, registrar and paying agent for the Bonds.

Section 12. Future Amendments.

- a. After the adoption of this resolution, but prior to the issuance and delivery of the Bonds, 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 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 and the Bond Indenture is 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 Issuer 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 13. Registered Form. The Bonds must be issued only in fully registered form, numbered and in such denominations as provided for each series of the Bonds in the Bond Indenture.

Section 14. Limitations.

- a. *Limitation on Payment and Nature of Security.* The Bonds are and will be a special limited obligation of DEDA. 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 the Bonds, the Documents or this resolution 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 Projects 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 Projects 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.
- 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 Governing Body, or of any officer, employee or agent of DEDA in that person's individual capacity. Neither the members of the Governing Body, 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 15. Offering and Disclosure Materials. DEDA has not participated in the preparation of the Final Official Statement, and has made no independent investigation with respect to the information contained therein, including the appendices thereto, other than the information therein relating solely to DEDA under the captions “INTRODUCTION - THE AUTHORITY” and “LITIGATION – THE AUTHORITY” (solely as it pertains to DEDA), a draft of which is attached hereto as Attachment A and such information is approved in substantially the form attached, and DEDA assumes no responsibility for the sufficiency, accuracy or completeness of such information. Subject to the foregoing, DEDA consents to the distribution and the use by the Underwriter in connection with the sale of the Bonds of the Final Official Statement in the form of the draft Preliminary Official Statement (with such changes and additions thereto as are approved by the Obligated Group Agent) now on file with DEDA.

Section 16. Conditions Precedent. The Bonds shall not be delivered until the following conditions have been satisfied:

- a. the Host Municipality has consented to the refunding of the 2003 Note by DEDA and issuance of the Series 2021A Bonds by DEDA to refinance the portion of the Projects located within the jurisdiction of the Host Municipality;
- b. the 2014 Project and 2016 Project and the issuance of a portion of the Bonds therefor are approved by DEED;
- c. the Projects and the issuance of the Bonds are approved by the Mayor of the City, in a separate writing; and
- d. the Borrower has agreed in writing to pay DEDA its administrative fee in the amount of $\frac{1}{4}$ of 1% of the stated principal amount of the Bonds.

Section 17. 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 18. Refunding. DEDA consents to the refunding of the 2012 Bonds, waives any notice of redemption required to be provided to DEDA, agrees that all documents for the refunding of the 2012 Bonds, including any notices and termination documents, may be given and executed without further consent, action or execution by DEDA and authorizes Borrower and its officers and agents and the 2012 Bond Trustee to take all actions and execute all documents for the refunding and redemption of the 2012 Bonds, including any required notices and termination documents.

Section 19. Effective Date. This resolution shall take effect immediately.

Approved by the Duluth Economic Development Authority this 28th day of July, 2021.

ATTEST:

Executive Director

STATEMENT OF PURPOSE: This resolution authorizes the issuance of tax-exempt bonds by DEDA (the "Bonds") to refund certain indebtedness issued by DEDA and the City of Two Harbors ("Two Harbors") to finance improvements at St. Luke's Hospital facilities in Duluth and Lakeview Memorial Hospital facilities in Two Harbors. Issuance of the Bonds is subject to the consent of Two Harbors to the refunding of its note issued in 2003. The Two Harbors action will take place on a date prior to the closing date of the bonds.

RESOLUTION 21D-29

RESOLUTION AUTHORIZING AGREEMENT WITH ELECTRIC SCIENTIFIC COMPANY FOR FIRE SUPPRESSION SYSTEM REWIRING AT THE MRO BUILDING IN AN AMOUNT NOT TO EXCEED \$74,780

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into an agreement with Electric Scientific Company for costs incurred to rewire the fire suppression system at the MRO building, consistent with the scope of work attached hereto, in an amount no to exceed \$74,780, payable from fund 866.

Approved by the Duluth Economic Development Authority this 28th day of July, 2021.

ATTEST:

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an agreement with Electric Scientific Company in an amount not to exceed \$71,860 to complete rewiring of the fire suppression system at the MRO building. Rewiring will be completed in area outlined in the attached scope of work.



ELECTRIC SCIENTIFIC COMPANY

Fire Protection Systems

www.electricscientific.com

Main Office: 7505 Highway 7	Minneapolis, MN 55426	952-933-4671
Northern Office: 4183 Thunderchief Lane	Duluth, MN 55811	218-729-7330
ND Office: 4229 Centurion Dr. Ste 6	Bismarck, ND 58504	701 223-3099

July 22, 2021

Jennifer Moses
City of Duluth

**RE: City of Duluth Hangar
2021 Proposal - Rewiring the Fire Alarm System**

Dear Jennifer,

This letter is requesting a complete rewire of the data circuit for the fire alarm system for the City of Duluth Hangar Facility. In October of 2020, Electric Scientific Company (ES) upgraded the fire control panel and fire alarm devices. The existing wiring stayed in-place and no new wiring was installed during the upgrade project. Since the fire alarm system upgrade, the system has had several communication issues with field devices. After many hours of investigating these issues, ES technical staff has come to the conclusion that the data circuit has wire integrity issues. During our investigation ES found numerous ground faults and improper electrical installation practices.

The electrical installation costs in this proposal are to provide the electrical labor and materials to rewire the data circuits for the fire detection system.

Electrical Installation Cost ----- \$ 74,780

Clarifications and Exclusions of this proposal:

- This proposal is based on being able to perform all work during normal business hours
- This proposal includes Benson Electric personnel to perform the wire pulling, ES will have technical staff onsite to assist Benson Electric to minimize the fire system downtime, along with isolating and deisolating the fire protection system daily
- This proposal does include the costs of the required bond
- This proposal does not include any lift rentals – until further discussion with the City of Duluth

We thank you for the opportunity to provide a proposal for this project. If you have any questions or need further information, please contact me at 218-729-7330 ext.106 or cellular 218-340-8258.

Sincerely,

Electric Scientific Company

Brandon S. Peterson
Project Manager

BPeterson@electricscientific.com