

**DEVELOPMENT AGREEMENT
BETWEEN
CITY OF DULUTH
AND
DULUTH ECONOMIC DEVELOPMENT AUTHORITY**

This DEVELOPMENT AGREEMENT (this "Agreement") is effective as of January 26, 2022 (the "Effective Date") and is by and between the CITY OF DULUTH, a municipal corporation and political subdivision under the laws of the State of Minnesota ("City") and the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and political subdivision under Minnesota Statutes Chapter 469 ("DEDA"). City and DEDA are referred to in this Agreement collectively as the "Parties."

RECITALS

WHEREAS, City is the owner of certain real property in St. Louis County, Minnesota, legally described on the attached Exhibit A, together with any and all improvements located thereon and all privileges, rights, and easements appurtenant thereto (the "Property").

WHEREAS, DEDA is an economic development authority established under Minnesota Statutes Chapter 469 with the purpose of supporting economic opportunities and development in the city of Duluth.

WHEREAS, through Resolution No. 21-0888 passed by the City Council on November 22, 2021, City stated its intention to convey the Property for development purposes.

WHEREAS, DEDA has the expertise and capabilities to facilitate the division and sale of the Property through the seeking of proposals for development of the Property, subject to the conditions and requirements established in this Agreement.

WHEREAS, City desires to convey the Property to DEDA for housing and other development purposes upon the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in this Agreement, the Parties covenant and agree for themselves and their successors and assigns as follows:

AGREEMENT

I. Definitions.

A. "Affordable Development Site" shall mean a Tract (defined below) that is designated for development of an Affordable Housing Project (defined below).

B. "Affordable Housing" shall mean owner occupied or rental housing for which the occupant(s) is/are paying no more than 30 percent of their income for gross housing costs, including utilities, as defined by the U.S. Department of Housing and Urban Development.

C. "Affordable Housing Project" shall mean a multi-family residential structure or structures, which shall be no fewer than forty (40) units in size, with the purpose of providing Affordable Housing.

D. "Affordable Housing Requirement" shall mean the requirement that a portion of the Property be developed for Affordable Housing as more specifically set forth in Section III.B. below.

E. "Appraisal" shall mean an appraisal prepared by an Appraiser (defined below) in conformity with the guidelines titled "Uniform Standards of Professional Appraisal Practice" that determines the Appraised Value (defined below) of the Property or a Tract.

F. "Appraised Value" shall mean the fair market value of the Property or a Tract as established by an Appraisal dated no more than six months prior to the effective date of a Development Agreement for the Property or Tract.

G. "Appraiser" shall mean an appraiser licensed and in good standing with the State of Minnesota as a Certified General Appraiser.

H. "Developer" shall mean a person or entity selected by DEDA through the Public Sale Process (defined below) to which any portion of the Property will be conveyed for development in accordance with this Agreement, a Development Agreement, adopted plans, and applicable regulations.

I. "Development Agreement" shall mean an agreement between DEDA and a Developer relating to the sale and development of any portion of the Property, which shall be commercially reasonable and comply with the requirements of this Agreement and all applicable law.

J. "Executive Director" shall mean the executive director of DEDA.

K. "Mixed Income Development" shall mean a multi-family residential development, which must include no fewer than twenty percent (20%) of the total units reserved for Affordable Housing.

L. "PPL Director" shall mean the director of City's Property, Parks, and Libraries Department or their designee, or a successor director of City's Parks Department.

M. "Sale Price" shall mean the purchase price paid by a Developer to DEDA for the Property, or any portion thereof.

N. "Sustainability Plan" shall mean an environmental and sustainability plan established for development of each Tract that: (i) is in conformance with City's comprehensive plan, (ii) provides for energy efficiency, and (iii) includes public pedestrian, bicycle and trail connections to surrounding public amenities and neighborhoods.

O. "Tract" shall mean any portion of the Property sold by DEDA that is less than the entirety of the Property.

P. "Traffic Analysis" shall mean a written report evaluating vehicular, pedestrian, and bicycle traffic impacts, as well as public transit access and multimodal transportation options, resulting due to development of the Property, or a portion thereof, prepared by a professional engineer licensed in the state of Minnesota, in form and substance satisfactory to the City Engineer.

II. City Conveyance of the Property to DEDA.

A. Conveyance. Subject to compliance with the terms and conditions of this Agreement, City shall convey the Property to DEDA for the sum of \$1.00.

B. Title Insurance. As soon as practicable following the Effective Date, City shall order a commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property from a title company selected by DEDA in an amount equal to the estimated market value of the Property as determined by the St. Louis County Assessor or as otherwise agreed to by the Parties (the "Title Commitment"). The premium for a title insurance policy, if DEDA elects to obtain title insurance, shall be paid for by DEDA. City shall pay for the cost of the Title Commitment.

C. Survey. As soon as practicable after issuance of the Title Commitment, City shall cause to be prepared an ALTA/ASCM survey of the Property, certified to City and DEDA (the "Survey"). The Survey shall be delivered to DEDA promptly and no later than 30 days prior to the Closing Date (defined below). City and DEDA shall have the right to review the Survey and request changes to the Survey to more accurately describe the Property and any easements and other encumbrances located thereon. The Survey and the Title Commitment shall be referred to collectively in this Agreement as the "Title Evidence." The Survey shall be paid for by DEDA. City shall reimburse DEDA for the cost of the Survey at the Closing.

D. Title Objections. In the event the Title Evidence reflects that title to the Property is not in a condition that is acceptable to DEDA, DEDA may object to the title by specifying DEDA's objections, and the specific manner in which DEDA desires that they be cured, in writing to City within 30 days of receipt of the Survey (the "Objections"). At City's election, City may cure all of the Objections, or City may decline to cure one or more of the Objections. City shall notify DEDA of its election by delivering written notice to DEDA within 30 days of receipt of the Objections. If City cures all of the Objections, the Parties shall proceed to Closing (defined below) subject to the terms and conditions of this Agreement. If City declines to cure or is unable, with such diligence as determined by City to be reasonable, to cure all of the Objections, DEDA may terminate this Agreement by delivering written notice of termination to City within 15 days of receiving notice that City will not cure or is unable to cure one or more of the Objections. If DEDA 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 DEDA fails to terminate this Agreement pursuant to this paragraph, DEDA shall be deemed to have waived the Objections and the Parties shall proceed to Closing subject to the terms and conditions of this Agreement.

E. Environmental. DEDA may, at its option and prior to Closing, obtain such environmental inspections and reports as to the Property as it deems necessary or advisable. DEDA's inspections will be conducted in accordance with the following procedures: (a) all persons performing any tests will be properly licensed and qualified and will have obtained all appropriate permits for performing such tests; (b) DEDA will advise the City at least two (2) days in advance of the dates of all tests and inspections; (c) the City will have the right to have a representative accompany DEDA and its agents, employees, contractors, and invitees while they are on the Property; (d) DEDA will promptly pay when due the costs of all entry and inspections, tests and examinations done with regard to the Property; (e) DEDA will, at its sole cost and expense, repair and restore the Property to its original condition before any such entry upon the Property and inspection, test or examination was undertaken. City shall have the right to review the environmental reports obtained by DEDA. If DEDA objects to the results of the environmental inspections and reports, its sole remedy shall be to terminate this Agreement in writing delivered to City. If DEDA 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.

F. Closing. The closing on the conveyance of the Property from City to DEDA (the "Closing") shall occur at a time mutually agreeable to the Parties on or before December 15, 2022 (the "Closing Date"). City shall deliver possession of the Property to DEDA on the Closing Date, subject to the License Agreement (defined below). Notwithstanding the above, the Parties may, by written agreement, extend the Closing Date up to a maximum of 120 days, in the sole discretion of the PPL Director, on behalf of City, and the Executive Director, on behalf of DEDA. If the Closing has not occurred on or before the Closing Date (as it may be extended by the PPL Director and the Executive Director): (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation 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.

G. Deed and Easements. On the Closing Date, City shall deliver a quitclaim deed, substantially in the form of Minnesota Uniform Conveyancing Blanks Form 10.3.5 (the "Deed"), to DEDA conveying City's interest in the Property to DEDA. In the event City determines, based on the Survey, that the Property should be subject to one or more easements in favor of City or third parties for utilities or other purposes, on the Closing Date DEDA shall enter into one or more easement agreements with City and/or third parties to establish such easements in the locations determined by City (the "Easements"). If DEDA objects to the location or form of any easement agreement, its sole remedy shall be to terminate this Agreement in writing delivered to City. If DEDA 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.

H. Taxes and Closing Costs. DEDA shall pay all costs of Closing, including but not limited to state deed tax and recording fees associated with the recording of this Agreement, the Deed, the Easements, and all necessary resolutions and ordinances of City and DEDA, in the office of the St. Louis County Recorder and/or Registrar of Titles, as applicable. Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement (though the Parties believe the Property is currently property tax-exempt). DEDA shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years.

I. Statutory Disclosures. City staff handling the sale of the Property on behalf of City 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.

G. Post-Closing License to City. At the Closing, DEDA and City shall enter in a License Agreement substantially in the form attached as Exhibit B (the "License Agreement") granting City the right to use the Property for a limited time after the Closing Date for the operation of a public golf course and other recreational purposes, at no cost to City. DEDA may not sell or otherwise transfer any portion of the Property until after December 31, 2023.

III. DEDA Conveyance of the Property to Developers

A. Public Sale Process. DEDA shall sell the Property as a whole, or divided into two or more Tracts, to one or more Developers through a public sale process in accordance with the requirements of this Agreement and Section 1 of 1955 Minn. Laws, Chapter 82 (the "Public Sale Process"). A Tract may not be less than 2.5 acres in size. The Public Sale Process shall include the creation and publication of one or more requests for proposal from the public under the processes normally used by DEDA for similar types of matters (each, a "Request for Proposal"). At a minimum, each Request for Proposal shall be advertised through publication on City's website for no less than 30 days prior to the deadline to respond to the Request for Proposal, so that reasonable notice to the public has been provided. DEDA may only sell the Property pursuant to the Public Sale Process. DEDA shall diligently pursue and conduct the Public Sale Process and the sale and development of all portions of the Property.

B. Requirement for Affordable Housing Project. DEDA will prioritize development of Affordable Housing Projects on the Property. In the event DEDA divides the Property into two or more Tracts, at least two Tracts shall be sold by DEDA pursuant to Development Agreements requiring Affordable Housing Projects. In the event the entirety of the Property is sold to one Developer, the Property shall be sold by DEDA pursuant to a Development Agreement requiring that not less than five acres of the Property be utilized to develop at least 80 units of Affordable Housing. In the event DEDA intends to divide the Property into two or more Tracts, DEDA shall issue a Request for Proposal for the Affordable Housing Projects prior to (or simultaneously with) any other Requests for Proposal.

C. Mixed Income Development. All residential developments on the Property (other than the Affordable Housing Projects required by the preceding paragraph) must be Mixed Income Developments.

D. Restrictions on Commercial Development. No more than 80,000 square feet of the Property may be utilized for commercial purposes. DEDA shall not enter into a single Development Agreement or a combination of Development Agreements that will result in the development of greater than 80,000 square feet of the Property, in the aggregate, as space for commercial occupancy. DEDA shall not enter into a Development Agreement allowing for the construction of a single, stand-alone commercial structure exceeding 20,000 square feet.

E. Appraisals. DEDA shall obtain an Appraisal for each portion of the Property prior to entering into a Development Agreement as to that portion of the Property. DEDA shall sell the Property (or Tract) for no less than the Appraised Value, unless approved in advance by the City Council.

F. Development Agreement Requirements. DEDA shall enter into a Development Agreement with each Developer selected through the Public Sale Process. DEDA is not required to select the Developer offering the highest Sale Price. A Development Agreement encumbering the Property, or portion thereof, to be sold must be entered into prior to closing on the sale to the Developer. DEDA must enter into one or more Development Agreements in satisfaction of the Affordable Housing Requirement prior to entering into any other Development Agreements. DEDA shall diligently enforce the terms and conditions of each Development Agreement. Each Development Agreement, including those requiring an Affordable Housing Project, shall include the following minimum requirements, which cannot be waived by DEDA without the prior written approval of the City Council:

1. Development of the property subject to the Development Agreement (the "Development Property") must be in compliance with all applicable ordinances, rules, regulations and laws of City and the state of Minnesota. The Developer shall be responsible for obtaining all approvals and permits of any kind required to implement construction from any governmental agency having jurisdiction with regard thereto, including but not limited to roadway access permits, wetland permits, storm water management permits, utility construction permits, fill and grading permits, erosion and sediment control permits, and building permits.

2. Prior to conveyance of the Development Property to Developer, the Development Agreement must be properly recorded against the Development Property in the Offices of the St. Louis County Recorder and Registrar of Titles, as applicable, with proof of recording provided to the Executive Director.

3. Prior to conveyance of the Development Property to Developer, Developer shall have submitted a Traffic Analysis to the Executive Director.

4. Prior to application for any building permits for the Development Property, Developer shall have (i) submitted a Sustainability Plan to the Executive Director, and (ii) prepared and filed with the Executive Director, in form and substance acceptable to the City Engineer, plans for any public improvements to be constructed or installed on the Development Property, including but not limited to road improvements, sidewalks, utilities, storm water management plan, etc.

5. No single, stand-alone commercial structure in excess of 20,000 square feet may be constructed on the Development Property.

6. The Developer must meet all requirements of the Development Agreement for acquisition of the Development Property and close on its purchase of the Development Property within 18 months of the effective date of the Development Agreement. If the Developer fails to close on its purchase within 18 months of the effective date of the Development Agreement, or at any point ceases to diligently move forward with the development of the Development Property, the Development Agreement shall terminate and Developer's interest in the Development Property shall terminate, with fee title vesting in DEDA, free and clear of all encumbrances.

7. The deed from DEDA to Developer shall include, as a covenant running with the land, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Development 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 project required by the Development Agreement, as determined in the sole discretion of the Executive Director, and (ii) issuance of a certificate of occupancy by City's Construction Services and Inspections Division.

8. The Sale Price for the Development Property shall be no less than the Appraised Value, unless approved in advance by the City Council.

9. The Developer shall indemnify City and DEDA relating to the environmental condition of the Development Property, in the same or similar form to the indemnification provisions set forth in Section XIV.B. below.

IV. Transfer of Funds to City and Reimbursable Expenses.

A. Sale Price Transferred to City. Within six months of the closing on the sale of any portion of the Property by DEDA to a Developer, DEDA shall remit the Sale Price to City.

B. Reimbursable Expenses. Subject to the limitations set forth in subparagraphs 1-4 below, City shall reimburse DEDA as to the following expenses relating to the sale and development of each portion of the Property (collectively, the "Reimbursement Expenses"): (i) survey costs to divide the Property into Tracts (each, a "DEDA Survey"), and (ii) the cost of the Appraisal(s). No other expenses of DEDA will be reimbursed by City.

1. City shall reimburse DEDA for 100% of the Reimbursable Expenses in connection with the sale of the Property or a Tract to a Developer. However, City shall only reimburse DEDA for 100% of the costs of one DEDA Survey and one Appraisal per portion of the Property. If more than one DEDA Survey or more than one Appraisal (or an updated or re-certified Appraisal) has been obtained in connection with any portion of the Property for any reason, the Reimbursable Expenses for the additional DEDA Survey(s) or Appraisal(s) shall be reduced by 50%.

2. If DEDA incurs expenses for a DEDA Survey and/or an Appraisal in connection with a transaction that does not result in a conveyance to a Developer, then City shall reimburse DEDA for 50% of the expense of the DEDA Survey or Appraisal.

3. All DEDA Surveys must be completed by Short Elliott Hendrickson Inc. unless otherwise approved by the PPL Director.

4. All Reimbursable Expenses must be approved in advance and in writing by the PPL Director. If DEDA fails to obtain advance written approval of any expense, City shall not reimburse DEDA for such expense. DEDA shall apply for reimbursement by submitting invoices for Reimbursement Expenses to City.

V. Seven Year Development Period; Reconveyance.

A. Development Deadline. DEDA shall sell the entirety of the Property to a Developer(s) or otherwise enter into a Development Agreement with a Developer(s) for the entirety of the Property within seven years of the Closing Date (the "Development Deadline"). If, on the Development Deadline, DEDA is the owner of any portion of the Property and that portion of the Property is not subject to a Development Agreement, then DEDA must convey that portion of the Property to City. If, on the Development Deadline, DEDA is (i) the owner of any portion of the Property, and (ii) that portion of the Property is subject to one or more Development Agreements, and (iii) one or more of those Development Agreements later terminate for any reason, then, upon termination of the Development Agreement(s), DEDA shall immediately convey that portion of the Property to City. Notwithstanding the foregoing, City may, in its sole discretion, extend the Development Deadline for the development of any portion of the Property by a resolution of the City Council amending this Agreement and providing for such extension.

B. Optional Reconveyance. If, at any time after the date that is five years from the Closing Date, DEDA is the owner of any portion of the Property (and that portion is not subject to a Development Agreement), DEDA may, at its sole option, convey that portion of the Property to City. In such event, DEDA shall no longer have any obligation to develop the reconveyed portion of the Property.

C. Status of the Property. All conveyances of the Property, or any portion thereof, by DEDA to City under this Section V, shall be: (i) free and clear of all mortgages, liens and other encumbrances whatsoever (except for encumbrances existing on the date of the Deed, the Easements and those other encumbrances already in favor of City or the general public), and (ii) free and clear of all structures, buildings and personal property. DEDA shall be solely responsible to take all actions necessary to put the Property, or portion thereof, into the condition required by this paragraph.

VI. Annual Reporting.

On or before March 1 of each calendar year following the Closing Date, DEDA shall submit a written report to the PPL Director summarizing the status of the development of the Property and DEDA's efforts to develop the Property.

VII. Assumption of Risk.

DEDA acknowledges and agrees that it has exclusively relied on its own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the Property, its condition, value and potential. The conveyance of the Property to DEDA shall constitute DEDA's acknowledgment that it has independently inspected and investigated the Property. At Closing, DEDA 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 DEDA's intended use may not have been revealed by DEDA's investigations.

VIII. No Representations by City.

Without limitation, DEDA acknowledges that City has made no representations or warranties (whether express or implied, oral or written) regarding the Property, including but not limited to the value, quality or condition of the Property; the status of title to the Property; the suitability of the Property for any activity or use which DEDA may conduct; the compliance of the Property with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property for a particular purpose; and compliance by the Property with any and all environmental rules, regulations, orders or laws. DEDA acknowledges and agrees that City has no obligation to remove any personal property or debris from the Property. DEDA acknowledges and agrees that, to the maximum extent permitted by law, DEDA is purchasing the Property in its "AS-IS" condition. This Section VIII shall survive the Closing and cancellation of this Agreement for any reason.

IX. Default and Remedies.

A. Default. In the event DEDA fails to perform or to comply with any of the terms, covenants and conditions of this Agreement, City shall give written notice of such default, specifying the nature of the default and, as appropriate, the corrective measures required and allowing DEDA 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, City may, at its option, exercise any one or more of the rights and remedies allowed by law and/or described in this Agreement. 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 City of any default on the part of DEDA or the failure of City to declare default on the part of DEDA 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 DEDA of the same or any other obligation of DEDA hereunder and, to be effective, any waiver of any default by DEDA shall be in writing by City.

B. Remedies. In the event of a default, City may:

1. seek and be entitled to monetary damages, including consequential damages, from DEDA for any damages incurred by City as a result of DEDA's default.

2. institute an action for specific enforcement to compel DEDA to perform any or all of its obligations under this Agreement.

3. seek and be entitled to receive reconveyance of the Property, or any portion thereof, from DEDA, free and clear of all liens and encumbrances whatsoever and free and clear of all structures or buildings and personal property.

4. seek and be entitled to injunctive and declaratory relief as is necessary to prevent DEDA's violation of the terms and conditions.

5. seek such other legal or equitable relief as a court of competent jurisdiction may be determined as available to City.

X. Subordination

City may, in its sole discretion, decide to subordinate this Agreement to liens or rights of other Parties. Subordination of rights will be deemed valid only when reduced to writing.

XI. 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 City: City of Duluth
Attn: City Clerk
411 W. First Street, Room 318
Duluth, Minnesota 55802

In the Case of DEDA: Duluth Economic Development Authority
Attn: Executive Director
411 W. First Street, Room 422
Duluth, Minnesota 55802

XII. No Real Estate Broker.

DEDA represents and warrants to City that this Agreement is made and entered into without the aid or assistance of a real estate broker or other agent, and DEDA hereby represents and warrants to City that DEDA 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 City for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

XIII. Construction.

City and DEDA have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions 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.

XIV. Indemnification.

A. Liability. DEDA shall be liable for any damage or injury to any person or property occasioned by the acts of DEDA, its employees, agents, contractors and subcontractors, relating to the Property. DEDA shall indemnify and hold harmless City and its 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 or development of the Property pursuant to this Agreement.

B. Indemnification. DEDA hereby agrees that for itself, its successors and assigns, it will indemnify and save City and its officers, agents, servants and employees 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. DEDA'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 DEDA to City pursuant to this paragraph is intended to run only to the benefit of City and is not intended to, nor shall it, inure to the benefit of any other third party. Promptly after receipt by City of notice of the commencement of any action with respect to which DEDA is required to indemnify City under this Agreement, City shall notify DEDA in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, DEDA shall assume the defense of the action, including the employment of counsel satisfactory to City and the payment of expenses. In so far as such action shall relate to any alleged liability of City with respect to which indemnity may be sought against DEDA, 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 DEDA. This Section XIV shall survive the Closing and cancellation of this Agreement for any reason.

XV. General Provisions

A. Recitals; Agreement Runs with the Land and Release. The recitals at the beginning of this Agreement are true and correct and are incorporated into this Agreement by reference. The terms and conditions of this Agreement shall survive delivery of the Deed and shall run with the Property. The City may release any portion of the Property from this Agreement at such time as the City determines that the terms and conditions of this Agreement, as to the released portion of the Property, have been satisfied.

B. Assignment. DEDA shall neither assign nor transfer any rights or obligations under this Agreement or any Development Agreement without prior written approval of City.

C. Authorization. The Parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the Parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said Parties on their behalf will constitute and be the binding obligation and agreement of the Parties in accordance with the terms and conditions hereof.

D. Amendments. Any amendments to this Agreement shall be in writing and shall be executed by the same officers who executed this Agreement or their successors in office. Any amendments to this Agreement shall be recorded in the office of the St. Louis County Registrar of Titles.

E. Waiver. The waiver by City or DEDA of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition of this Agreement.

F. Choice of Law, Venue and Jurisdiction. 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.

G. No Third Party Beneficiaries. This Agreement is to be construed and understood solely as an Agreement between DEDA and City and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between City and DEDA, may be waived at any time by mutual agreement between City and DEDA.

H. Relationship Between Parties. Nothing in this Agreement is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties or of constituting DEDA as an agent, representative or employee of City for any purpose or in any manner whatsoever.

I. Invalidity. 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.

J. Complete Agreement. This Agreement, including exhibits, constitutes the entire agreement between the Parties and supersedes all prior written and oral agreements and negotiations between the Parties relating to the subject matter hereof. 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. The exhibits to this Agreement are as follows:

Exhibit A: Legal Description of the Property
Exhibit B: License Agreement

[Remainder of this page is intentionally left blank.]

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

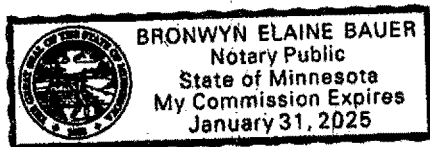
CITY OF DULUTH

By: [Signature]
Mayor

By: [Signature]
City Clerk

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

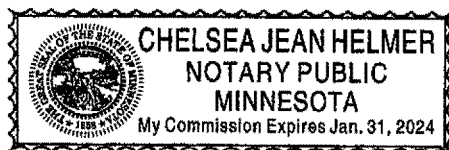
This instrument was acknowledged before me on January 10, 2022, by Emily Larson, Mayor of the City of Duluth, a municipal corporation and political subdivision organized and existing under the laws of the State of Minnesota.



Bronwyn Elaine Bauer
Notary Public

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

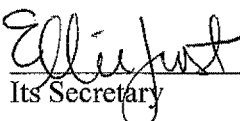
This instrument was acknowledged before me on January 10, 2022, by Ian B. Johnson, City Clerk of the City of Duluth, a municipal corporation and political subdivision organized and existing under the laws of the State of Minnesota.



[Signature]
Notary Public

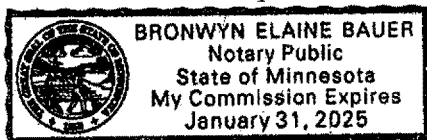
DULUTH ECONOMIC DEVELOPMENT AUTHORITY

By: 
Its President

By: 
Its Secretary

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

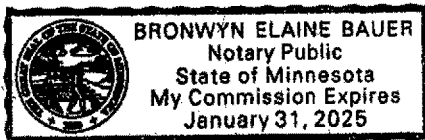
The foregoing instrument was acknowledged before me this 3rd day of February, 2022, by Matt Carter, the President of the Duluth Economic Development Authority, a public body, corporate and politic and political subdivision under Minnesota Statutes Chapter 469.




Notary Public

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

The foregoing instrument was acknowledged before me this 3rd day of February, 2022, by Ellie Just the Secretary of the Duluth Economic Development Authority, a public body, corporate and politic and political subdivision under Minnesota Statutes Chapter 469.




Notary Public

This instrument was drafted by:
Office of the City Attorney
Room 410 City Hall
411 West 1st Street
Duluth, MN 55802-1198

EXHIBIT A

Lots 9 through 24, inclusive, Block 57; Lots 1 through 28, inclusive, Block 58; Lots 1 through 6, inclusive, Block 59; Lots 1 through 28, inclusive, Block 63; and Lots 9 through 30 inclusive, Block 64, EXCEPT all those parts of Lots 28, 29, and 30, said Block 64, lying southerly of the following described line:

BEGINNING at a point where the north line of vacated Oneida Alley intersects the common boundary line between Lots 8 and 9, Block 64, thence run easterly to a point where the north line of vacated Tioga Street intersects the common boundary line between Lots 27 and 28, Block 64, and said line there terminating; all in LESTER PARK FOURTH DIVISION, according to the recorded plat thereof, Saint Louis County, Minnesota;

AND

Lot 11, EDGEWATER, according to the recorded plat thereof, Saint Louis County, Minnesota;

AND

All those parts of Lots 10 and 13, EDGEWATER, and Lots 1 through 4, inclusive, and Lots 23 through 28, inclusive, Block 62, LESTER PARK FOURTH DIVISION, lying southerly of the following described line:

Commencing at the West Quarter Corner of Section 4, Township 50 North, Range 13 West, Saint Louis County, Minnesota, according to the US Government Survey thereof, thence North 1 degree 04 minutes 21 seconds West, assigned bearing, along the west line of said Section 4, a distance of 381.59 feet; thence North 89 degrees 27 minutes 39 seconds East a distance of 567.80 feet to a point on the west line of said Lot 10, EDGEWATER, said west line of Lot 10 being the centerline of Benson Road, according to said plat of EDGEWATER, said Benson Road now being known as Lester River Road, and said point being the POINT OF BEGINNING; thence continuing North 89 degrees 27 minutes 39 seconds East a distance of 961.27 feet to the northwesterly line of East Oneida Street, LESTER PARK FOURTH DIVISION; said line also being the southeasterly line of said Lot 13, EDGEWATER; thence continuing North 89 degrees 27 minutes 39 seconds East a distance of 509.03 feet, more or less, to the northeast line of said Lot 23, Block 62, LESTER PARK FOURTH DIVISION, and there terminating.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is entered into by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under the laws of the State of Minnesota ("DEDA"), and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (the "City").

The parties acknowledge the following:

A. The City previously owned certain real property used in connection with the Lester Park Golf Course (the "Golf Course") located in the City of Duluth, County of St. Louis, State of Minnesota, which real property is legally described on the attached Exhibit A (the "Property").

B. The City and DEDA entered into a Development Agreement dated _____, 202____ (the "Development Agreement") that requires DEDA to grant the City a temporary license to use the Property for the operation and maintenance of a public golf course and other public recreational purposes, including but not limited to the provision of utilities to service the Golf Course.

C. DEDA and the City desire to enter into this Agreement as required by the Development Agreement.

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

1. THE LICENSE. Subject to the terms and conditions in this Agreement, DEDA grants the City a license for use of the Property during the Term (defined below).

2. CITY USE OF THE PROPERTY. The City's use of the Property shall be limited to the operation and maintenance of the Golf Course and other public recreational purposes. At the sole discretion and with the prior written approval of the Executive Director of DEDA (the "Executive Director"), the City may use the Property for other uses. Notwithstanding anything to the contrary in this Agreement, beginning January 1, 2024 and throughout the remainder of the Term, the City may only use the Property pursuant to this License if: (i) the Enger Park Golf Course is not or will not be open for public golf purposes in 2024; and (ii) the City's activities on the Property do not interfere or conflict with DEDA's development of the Property pursuant to the Development Agreement. After January 1, 2024, at DEDA's request, the City shall provide a termination of this Agreement as to any portion of the Property that it is no longer using pursuant to the preceding sentence.

3. DEDA USE OF THE PROPERTY. During the Term, DEDA will be soliciting development proposals for the sale and development of the Property as required by the Development Agreement and may enter into one or more agreements with developers (each, a "Developer") relating to development of the Property. DEDA expressly reserves the limited right to access the Property during the Term in order to perform due diligence activities relating to development of the Property, which right shall include employees, servants, agents, contractors, invitees, and licensees of DEDA and/or a Developer (each a "DEDA Guest.") DEDA and DEDA Guests' use of the Property shall in no way limit, restrict, or interfere with the City's or the public's use of the Property (except after January 1, 2024 as permitted by the preceding paragraph). DEDA shall notify the City no less than 24 hours in advance of DEDA and/or a DEDA Guest accessing the Property. In the event DEDA's or a DEDA Guest's activities on the Property occur at the same time as the City's operation of the Golf Course, DEDA shall, at its expense, provide and install such signage and/or physical barriers as may be necessary to warn and protect the public. DEDA shall, at its expense, restore any damage to the Property due to its or any DEDA Guest's activities on the Property.

4. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on _____, 2022, and shall continue through December 31, 2024, or until such time the City has ceased operation and maintenance of the Golf Course, whichever is earlier (the "Term"). DEDA may not unilaterally terminate this Agreement prior to the end of the Term for any reason.

5. LICENSE FEE. The City shall not be charged a fee for its use of the Property.

6. DEDA WARRANTY. DEDA makes no representation that the Property is suitable for any specific uses and the City accepts the Property in "as is" condition without representations or warranties of any kind, except as may be set forth in the Development Agreement. DEDA shall not be obligated to make any alterations or improvements on or to the Property.

7. MAINTENANCE. The City shall exercise reasonable care in the use and maintenance of the Property during the Term. The City shall not make any alterations or improvements to the Property without the prior written consent of the Executive Director and then upon the terms and conditions which may be imposed by the Executive Director in their sole discretion. The foregoing sentence shall not apply to alterations or improvements of existing infrastructure or structures or the grounds used in connection with the Golf Course. The City shall surrender the Property at the termination of this Agreement in "as in" condition. The parties acknowledge that reasonable wear and tear is expected to occur to the Property during the Term. The City shall not be responsible to perform any repairs to the Property or remove any improvements from the Property at the end of the Term.

8. UTILITIES. The City shall be responsible for the cost of all utilities to the Property.

9. ACCESS. DEDA reserves the right to access the Property during the Term for the purpose of ensuring that the provisions of this Agreement are complied with by the City.

10. DEDA HOLD HARMLESS. DEDA agrees to defend, indemnify, and save harmless the City, and its officers, agents, servants, and employees from any and all liens, judgments, claims including those for contribution and indemnity, suits, demands, liability, costs, damages, and expenses asserted by any person or persons including agents or employees of the City by reason of death or injury to person or persons or the loss or damage to the Property or any personal property of the City or any cause of action arising out of or in connection with or relating to DEDA's or DEDA's Guest's use or occupancy of the Property, except those claims, causes of action, liabilities or damages relating to or arising from or based upon the negligence, willful acts or omissions of the City and its officers, agents, servants or employees. On ten days' written notice from the City, DEDA will appear and defend all lawsuits against the City growing out of such injuries or damages using counsel acceptable to the City. DEDA shall require, by written agreement, all DEDA Guests to defend, indemnify, and save harmless the City, and its officers, agents, servants, and employees consistent with the provisions of this Section 10.

11. CITY HOLD HARMLESS. The City agrees to defend, indemnify, and save harmless DEDA, and its officers, agents, servants, and employees from any and all liens, judgments, claims including those for contribution and indemnity, suits, demands, liability, costs, damages, and expenses asserted by any person or persons including agents or employees of DEDA by reason of death or injury to person or persons or the loss or damage to the Property or any personal property of DEDA or any cause of action arising out of or in connection with or relating to the City's use or occupancy of the Property, except (i) those claims, causes of action, liabilities or damages relating to or arising from or based upon the negligence, willful acts or omissions of DEDA and its officers, agents, servants or employees, and (ii) those claims, causes of action, liabilities or damages relating in any way whatsoever to DEDA or any DEDA Guest accessing the Property. On ten days' written notice from DEDA, the City will appear and defend all lawsuits against DEDA growing out of such injuries or damages using counsel acceptable to DEDA.

12. INSURANCE. During the Term, any DEDA Guest accessing the Property shall have such insurance coverage as will protect the DEDA Guest and the City against risk of loss or damage to the Property and any other property of the City located on or used at the Property, and against claims that may arise or result from the use of the Property during the Term. All DEDA Guests shall procure and maintain continuously in force Public Liability and Automobile Insurance (if vehicles are used) written on an "occurrence" basis under a Commercial General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death and limits of \$1,500,000 for property damage liability. Insurance required in this Agreement 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 the State of Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products – completed operations. All DEDA Guests shall provide the City with Certificate(s) of Insurance evidencing the required insurance coverage, with 30-day notice of cancellation, non-renewal, or material change provisions included. The City does not represent or guarantee that the types or limits of coverage required by this Agreement are adequate to protect the interests and liabilities of the DEDA Guests. The required insurance policies must be in form and substance that is acceptable to the City Attorney and shall name the City as an additional insured. The City reserves the right to require a DEDA Guest to increase the coverages set forth above and to provide evidence of such increased insurance to reflect the municipal liability limits set forth in Minn. Stat. § 466.04, as amended from time to time.

13. INDEPENDENT CONTRACTOR. Nothing in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the City as an agent, representative, or employee of DEDA for any purpose or in any manner whatsoever or as constituting DEDA as an agent, representative, or employee of the City for any purpose or in any manner whatsoever. The City and its employees shall not be considered employees of DEDA and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of the City's employees or agents while so engaged, and any and all claims whatsoever on behalf of the City's employees and agents arising out of employment shall in no way be the responsibility of DEDA. The City's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay, and PERA. DEDA and its employees shall not be considered employees of the City and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of DEDA's employees or agents while so engaged, and any and all claims whatsoever on behalf of DEDA's employees and agents arising out of employment shall in no way be the responsibility of the City. DEDA's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from the City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay, and PERA.

14. ASSIGNMENT. Except as permitted by this Agreement, the City shall not in any way assign or transfer its rights or interests under this Agreement or subcontract with any other party without the prior written consent of the Executive Director. DEDA acknowledges that the City has entered into a management agreement with Antares Golf, now known as Indigo Sports, LLC ("Antares Golf") for the operation, maintenance and improvement of the Golf Course (and other City-owned property) and consents to Antares Golf undertaking some or all of the City's rights and interests hereunder.

15. LAWS, RULES AND REGULATIONS. During the Term the City shall operate the Property in strict compliance with the United States Constitution and with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, and DEDA, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. The City shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination. The City shall procure, at the City's expense, all licenses and permits necessary for carrying out its activities on the Property.

16. WAIVER. The waiver by DEDA or the City of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

17. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

18. NOTICES. Notices shall be sufficient if hand-delivered or sent by regular United States mail, postage prepaid, addressed to DEDA, Attn: Executive Director, 422 City Hall, 411 West First Street, Duluth, Minnesota 55802; and addressed to City of Duluth, Attn: Property and Facilities Manager, 1532 W. Michigan St., Duluth, MN 55806, or to such other persons or addresses as the parties may designate to each other in writing from time to time.

19. APPLICABLE LAW. This Agreement, together with all of its paragraphs, terms, and provisions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

21. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

22. ENTIRE AGREEMENT. This Agreement, including Exhibit A, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof, except the Development Agreement.

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

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

CITY OF DULUTH

By: _____
Its President

By: _____
Its Mayor

Date: _____

Date: _____

By: _____
Its Secretary

Attest: _____
City Clerk

Date: _____

Date: _____

Countersigned:

City Auditor

Date: _____

Approved as to form:

City Attorney