

MEETING OF THE  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
**WEDNESDAY, FEBRUARY 26, 2020 - 5:15 P.M.**  
COUNCIL CHAMBERS, THIRD FLOOR, CITY HALL  
AGENDA

CALL TO ORDER

PUBLIC TO ADDRESS THE COMMISSION

PUBLIC HEARINGS

1. **RESOLUTION 20D-15:** RESOLUTION AUTHORIZING CONVEYANCE OF EASEMENT OVER OLD RAILROAD PROPERTY IN LINCOLN PARK TO THE CITY OF DULUTH
2. **RESOLUTION 20D-17:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH SUMDAY, LLC, IN THE AMOUNT OF \$20,200 RELATED TO PROPERTY AT THE FORMER ATLAS CEMENT PLANT SITE
3. **RESOLUTION 20D-20:** RESOLUTION AUTHORIZING CONVEYANCE OF OLD RAILROAD PROPERTY IN LINCOLN PARK TO THE STATE OF MINNESOTA

APPROVAL OF MINUTES:        JANUARY 22, 2020 MEETING

APPROVAL OF CASH TRANSACTIONS – JANUARY 1, 2020 – JANUARY 31, 2020

NEW BUSINESS

RESOLUTIONS FOR APPROVAL

1. **RESOLUTION 20D-13:** AUTHORIZING AN AMENDMENT TO THE NOTE WITH PIER B HOLDING LLC
2. **RESOLUTION 20D-14:** RESOLUTION AUTHORIZING FORGIVENESS OF LOAN TO HRA PERTAINING TO THE SEAWAY (ESMOND) HOTEL PROJECT
3. **RESOLUTION 20D-15:** RESOLUTION AUTHORIZING CONVEYANCE OF EASEMENT OVER OLD RAILROAD PROPERTY IN LINCOLN PARK TO THE CITY OF DULUTH
4. **RESOLUTION 20D-16:** RESOLUTION AUTHORIZING ACQUISITION OF CERTAIN REAL PROPERTY FROM THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA RELATED TO THE REBUILD DULUTH PROGRAM

5. **RESOLUTION 20D-17:** RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH SUMDAY, LLC, IN THE AMOUNT OF \$20,200 RELATED TO PROPERTY AT THE FORMER ATLAS CEMENT PLANT SITE
6. **RESOLUTION 20D-18:** RESOLUTION AUTHORIZING AN AGREEMENT TO INSURE CERTAIN DEDA PROPERTY UNDER THE CITY OF DULUTH'S PROPERTY AND BOILER INSURANCE POLICIES IN AN AMOUNT NOT TO EXCEED \$712.00
7. **RESOLUTION 20D-19:** RESOLUTION APPROVING THE AMENDMENT AND REDESIGNATION OF EDUCATIONAL FACILITIES REVENUE NOTES, SERIES 2015, AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS
8. **RESOLUTION 20D-20:** RESOLUTION AUTHORIZING CONVEYANCE OF OLD RAILROAD PROPERTY IN LINCOLN PARK TO THE STATE OF MINNESOTA

#### DISCUSSION

1. DIRECTOR'S REPORT

**RESOLUTION 20D-15**

**RESOLUTION AUTHORIZING CONVEYANCE OF  
EASEMENT OVER OLD RAILROAD PROPERTY  
IN LINCOLN PARK TO THE CITY OF DULUTH.**

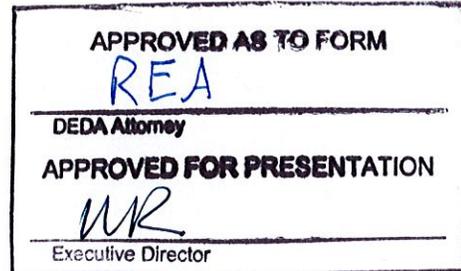
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that

1. DEDA has determined that the conveyance of easements as described in Exhibit A, attached hereto and made a part hereof, over the property described therein to the City of Duluth is necessary to the transportation and utilities needs of Lincoln Park neighborhood and the city at large and is therefore in the best interests of the City and its people.
2. DEDA further finds that that the conveyance will further the general plan for economic development of the entire City.
3. The proper DEDA officials are hereby authorized convey the easement legally described in Exhibit A to the City of Duluth at no cost.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize DEDA to convey an easements over certain of its property in Lincoln Park to the City for road and utility purposes prior to considering conveyance of the remainder of DEDA's interest in the remainder of the property to MnDOT for its use in the redesign and reconstruction of the Twin Ports Interchange (the "can of worms").

The general location of the property affected by the proposed easement is south of Michigan Street and west of 24<sup>th</sup> Avenue West. It was originally acquired in the 1990's as part of the Soo Line Railroad property acquisition which facilitated the development of "Lower Michigan Street" through Lincoln Park.

MnDOT has determined that they need to acquire the underlying fee interest in the property as part of the Twin Ports Interchange redesign and reconstruction project. The City has need of the easements described above because the underlying property includes an access road and City-owned utilities.

As MnDOT needs the underlying property for the Twin Ports Interchange Project, DEDA needs to convey the subject easements to the City so that those interests are not lost.

# RIGHT OF WAY PARCEL LAYOUT



MINNESOTA DEPARTMENT OF TRANSPORTATION

Topographic Information required: Proposed R/W line & access taking.

Lot lines & dimensions.

Show north arrow.

Outline & location of buildings & improvements. Streets or highway frontage.

C.S. 6982(35=390)906

S.P. 6982-322

COUNTY ST LOUIS

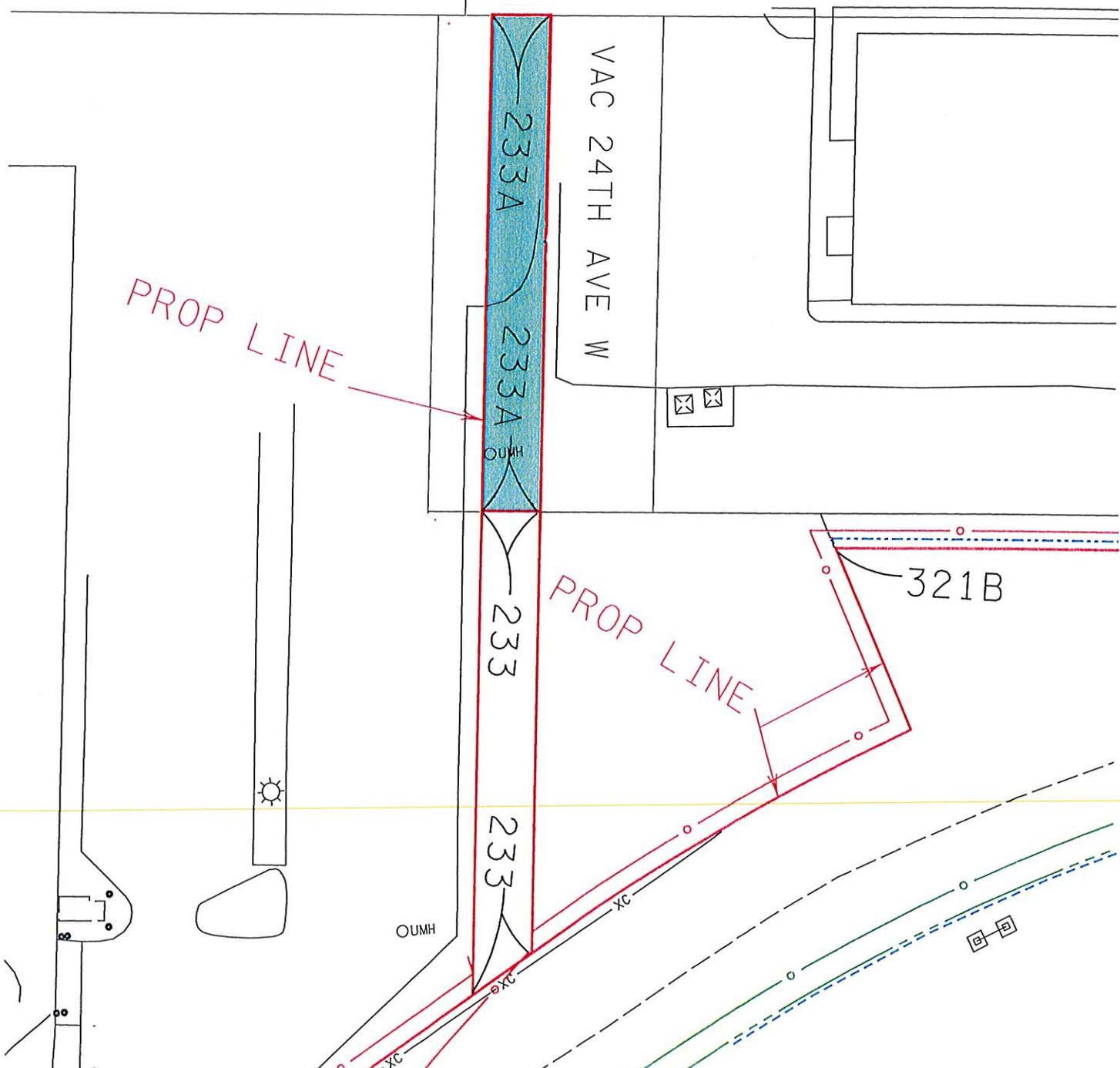
PARCEL NO. 233A

OWNER DEDA

Scale 1" = 40 ft.

C.S. 6982(35=390)906) S.P. 6982-322

DULUTH PROPER SECOND DIVISION									
PARCEL NUMBER	OWNER	CONTIGUOUS PROPERTY	ENTIRE TRACT WITHOUT ROADS	NEW T.H. R/W	BALANCE	TEMPORARY EASEMENT		TORRENS	PERMANENT R/W INTEREST
			SQ. FEET	SQ. FEET	SQ. FEET	SQ. FEET	EXPIRES	SQ. FEET	
233A	DEDA	Pt LOT 2 & VAC AVE	2380	2380	0				FEE



**RESOLUTION 20D-17**

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH  
SUMDAY, LLC, IN THE AMOUNT OF \$20,200 RELATED TO PROPERTY  
AT THE FORMER ATLAS CEMENT PLANT SITE**

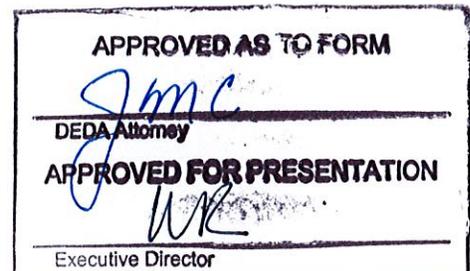
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that DEDA does hereby make the following determinations and findings:

- A. That the sale of property to Sumday, LLC is in the best interests of the City of Duluth and its people and that the transaction furthers the general plan for economic development in the area.
  - B. That, after not less than ten (10) or more than twenty (20) days' published notice, the public hearing was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on February 26, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Sumday, 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 Land Sale Agreement, substantially in the form of the copy attached hereto, with Sumday, LLC, for the sale of that property in St. Louis County, Minnesota, legally described below for the sum of Twenty Thousand Two Hundred (\$20,200), said sum to be payable into Fund 0860:
- Lot 1, Block 2, Atlas Industrial Park (the "Property").
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Sumday, LLC.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

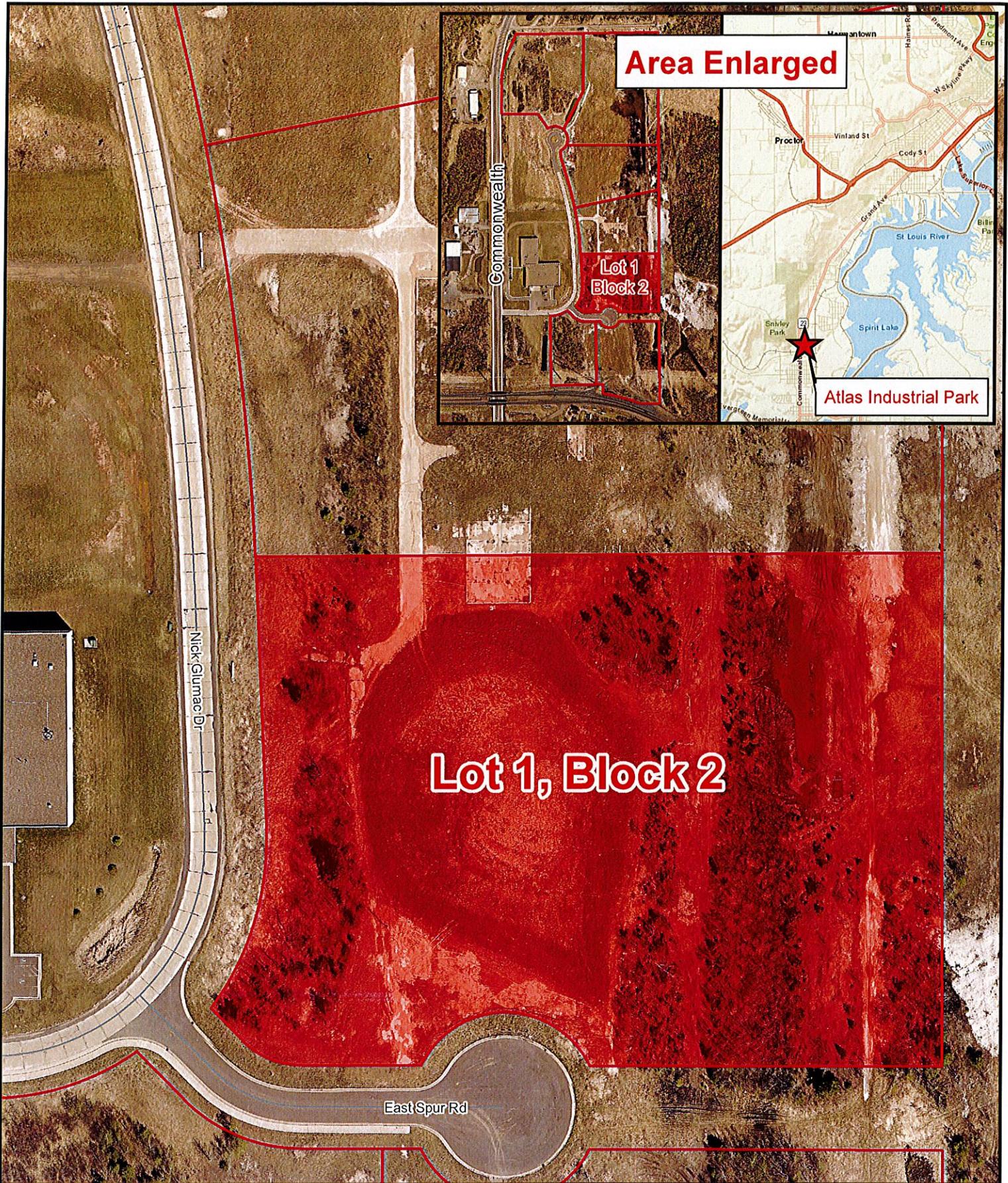
\_\_\_\_\_  
Executive Director



**STATEMENT OF PURPOSE:** The purpose of this resolution is to authorize the sale of certain property at the former Atlas Cement Plant site depicted on the attachment to this resolution. The subject parcel is a part of the DEDA-owned Atlas Industrial Park. The Land Sale Agreement is entered into between Sundry, LLC dba TruGreen and DEDA for the purpose of redeveloping the parcel for commercial development.

It is anticipated that this Land Sale Agreement will result in 7 full-time-equivalent jobs created in Duluth, with an unburdened wage of \$14 per hour. The Land Sale agreement requires that within one year construction must begin on a 5,000 square-foot warehouse and office facility, with a minimum construction cost of \$250,000, to support the lawn, tree, and shrub care business. Construction is required to be completed by November 1, 2021.

DEDA agrees to contract with an environmental services firm to conduct a Phase I and, if necessary, a Phase II environmental assessment of the property, subject to approval from the U.S. Environmental Pollution Agency that the cost of the Phase I and Phase II environmental assessments are eligible to be paid through a City of Duluth-managed EPA Grant. In the event the Phase II assessment reflects an environmental condition on the property that is not acceptable to Sundry, it may terminate the Land Sale Agreement within 30 days of receipt the Phase II environmental assessment report. DEDA is not responsible for any contaminant remediation.



**Area Enlarged**

**Lot 1  
Block 2**

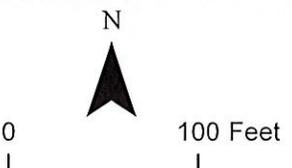
**Atlas Industrial Park**

**Lot 1, Block 2**

Nick Glumac Dr

Commonwealth

East Spur Rd



PROPERTY LOCATION  
ATLAS INDUSTRIAL PARK  
LOT 1, BLOCK 2  
LAND SALE AGREEMENT WITH  
SUMDAY, LLC

## LAND SALE AGREEMENT

THIS AGREEMENT entered into by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469, ("DEDA"), and Sumday, LLC, a Minnesota limited liability company ("Developer").

WHEREAS, Developer desires to acquire certain DEDA-owned property at the Atlas Industrial Park for purpose of constructing a 5,000 square foot building consisting of warehouse and office space for its lawn care maintenance and treatment business; and

WHEREAS, it is anticipated that Developer will create jobs in Minnesota through the relocation from Wisconsin of 7 FTEs for at least two years with unburdened wages of \$14 per hour; and

WHEREAS, DEDA is desirous of assisting and cooperating with Developer in fostering its project and finds that the conveyance of the DEDA-owned property to Developer is in the best interests of the City and its people and that the transaction furthers DEDA's general plan for development in the area.

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

1. Developer Application Fee.

Pursuant to DEDA's fee schedule, Developer has paid a non-refundable application fee of \$1,000.00.

2. Sale of the Property.

The proper DEDA officials are hereby authorized to sell to Developer for the amount of \$20,200 payable into DEDA Fund 860-860-8640-4640, and Developer shall accept, that property located in St. Louis County Minnesota being more particularly described as:

Lot 1, Block 2, Atlas Industrial Park (the "Property")

3. Phase I and II Environmental Assessment Contingency.

DEDA agrees to contract with an environmental services firm to conduct a Phase I and, if necessary, a Phase II environmental assessment of the Property, subject to approval from the U.S. Environmental Pollution Agency ("EPA") that the cost of the Phase I and Phase II environmental assessments ("Assessments") are eligible to be paid through a City of Duluth-managed EPA Grant. If the costs of the Assessments are approved, DEDA shall provide a copy of the Phase I environmental report to Developer, and within thirty days thereafter, Developer shall have provided to DEDA a detailed site plan identifying specific locations of all site improvements to inform the Phase II environmental assessment. Upon completion of the Phase II environmental assessment, DEDA shall provide a copy of the Phase II environmental assessment report to Developer. In the event the Phase II assessment reflects an environmental condition on the Property that is not acceptable to Developer, Developer may terminate this Agreement by delivering written notice of termination to DEDA within 30 days of receipt the Phase II environmental assessment report. If Developer terminates this Agreement

pursuant to this Section, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Developer fails to terminate this Agreement pursuant to this Section, the parties shall proceed to closing unless terminated as contemplated by Section 4 of this Agreement.

In the event the EPA does not approve the costs of any part of the Assessments, DEDA shall not be required to conduct the Assessments of the Property, and the parties shall proceed to closing unless terminated as contemplated by Section 4 of this Agreement. Alternatively, Developer may determine to conduct its own Assessments of the Property, and agrees to provide DEDA a copy of all subsequent reports. In the event Developer's Phase II assessment reflects an environmental condition on the Property that is not acceptable to Developer, Developer may terminate this Agreement by delivering written notice of termination to DEDA within 30 days of the date of the Phase II environmental assessment report. If Developer terminates this Agreement pursuant to this Section, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Developer fails to terminate this Agreement pursuant to this Section, the parties shall proceed to closing unless terminated as contemplated by Section 4 of this Agreement.

#### 4. Title Commitment.

In the event this Agreement has not been terminated as set forth in Section 3, and upon the Developer's request and at the Developer's cost, DEDA agrees to obtain a title commitment. In the event that the title commitment reflects that title to the Property is not in a condition that is acceptable to Developer, Developer may object to the title defects by specifying Developer'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 may decline to fix any title defects by delivering written notice to Developer within 10 days of receipt of Developer's title objections. If DEDA chooses to fix the title defects, DEDA shall have forty-five (45) days after giving notice to Developer within which to cure the title defects after which the parties shall proceed to closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Developer 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 Developer terminates this Agreement pursuant to this Section, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Developer fails to terminate this Agreement pursuant to this Section, the parties shall proceed to the closing as contemplated by this Agreement.

#### 5. Closing

The closing on the conveyance of the Property from DEDA to Developer shall occur at a time and location mutually agreeable to the parties but in no event later than July 1, 2020 (the "Closing Date"). DEDA shall deliver possession of the Property on the Closing Date.

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 obligation to one another pursuant to this Agreement. Notwithstanding the above, the Closing Date may

be extended if DEDA's Executive Director ("the Executive Director") and Developer mutually agree to do so.

6. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Developer conveying DEDA's interest in the Property to Developer. The conveyance of title to the Property shall be subject to covenants, conditions, restrictions, declarations, easements and encumbrances of record; the reservation of minerals and mineral rights by the State of Minnesota; 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.

7. Deed Covenant

The quitclaim deed shall also contain, as a covenant running with the land, 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 cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon completion of construction of the Project described below in accordance with the approved plans and specifications as evidenced by the issuance of a certificate of occupancy by the City's Construction Services and Inspections Division ("Certificate of Occupancy").

8. The Project

Developer hereby agrees to construct on the Property a building of not less than 5,000 square feet with a total construction cost of not less than \$250,000 consisting of warehouse and office space for its lawn care maintenance and treatment business (the "Project"), and its use of the Property shall be for purposes of the Project. Developer further agrees that the Project shall conform to the City of Duluth's Engineering Guidelines and Unified Development Chapter, including but not limited to, storm water policies and requirements, driveway entrance requirements, and parking lot design standards.

9. Plans and Specifications

Prior to the commencement of any construction work on the Project, Developer shall have presented to DEDA plans and specifications for the Project. Such plans shall be subject to DEDA's approval in the form of approval of the Executive Director in writing, which approval shall not be unreasonably withheld. In the event of any proposed change in the plans and specifications after the initial approval by the Executive Director, said proposed change shall be likewise subject to the approval of the Executive Director.

10. One-Year and November 1, 2021 Deadlines

Within one year of the date of conveyance of the Property from DEDA to Developer, Developer shall have commenced construction of the Project. The commencement of construction shall be demonstrated by the issuance of a building permit and/or filling and grading permit and the filing of an affidavit with the Executive Director, executed by Developer, to which are attached pictures of commenced construction. On or before November 1, 2021, Developer shall have completed construction of the Project as

evidenced by Developer's submittal to the Executive Director of a Certificate of Occupancy issued by the City of Duluth's Construction Services and Inspections Division. If Developer fails to meet either the one-year deadline or the November 1, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA, and upon written notice from DEDA, Developer agrees to reconvey the Property to DEDA, free and clear of all liens and encumbrances.

11. 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.

12. Recordation.

Immediately upon delivery of the quitclaim deed conveying the Property to Developer, Developer agrees to record this Land Sale Agreement and the quitclaim deed in the office of the St. Louis County Registrar of Titles and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA an executed original of this Agreement and the quitclaim deed showing the date and document numbers of record, or duly certified copies of the filed originals.

13. Environmental Indemnification.

Developer hereby agrees that for itself, its successors and assigns, it will indemnify and save DEDA and its officers, agents, servants and employees and any person who controls DEDA 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. Indemnification granted hereby 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 if DEDA chooses to require indemnification of the same, 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 Developer to DEDA pursuant to this Section is intended to run only to the benefit of DEDA and is not intended to, nor shall it, inure to the benefit of any third party.

14. Assumption of Risk

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

15. No Representations by DEDA

Without limitation, Developer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Developer 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. Developer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Developer acknowledges and agrees that, to the maximum extent permitted by law, Developer is purchasing the Property in its "AS-IS" condition. This Section 15 shall survive the closing, cancellation or termination of this Agreement for any reason.

16. Taxes and Costs

There are no property taxes due or special assessments assessed against the Property. In the event that any outstanding property taxes or special assessments become assessed against the Property, DEDA shall pay all real estate taxes and installments of special assessments assessed against the Property before and up to the Closing Date, and Developer shall pay all real estate taxes and installments of special assessments assessed against the Property on and after the Closing Date. Developer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, any title company costs and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement. The parties intend that DEDA will not incur any out of pocket expenses in relation to the conveyance and acquisition contemplated by this Agreement or in relation to the Project.

17. Default and Remedies.

In the event that Developer fails to perform or to comply with any of the terms, covenants or conditions of this Agreement, and said failure to so perform or comply shall continue for a term of thirty (30) days after notice from DEDA to Developer of such nonperformance or noncompliance, Developer shall be in default of its obligations hereunder and DEDA may, at its option, and in addition to the remedies set forth in Sections 5, 7, or 10, exercise any one of more of the following rights and remedies. The remedies provided for under this Section shall be deemed to be cumulative and nonexclusive 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 Developer hereunder 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 any other obligation of Developer hereunder and, to be effective, any waiver of any Developer default hereunder shall be in writing by DEDA.

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

b. DEDA may seek and be entitled to receive reconveyance of the Property from Developer, free and clear of all liens and encumbrances whatsoever.

c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Developer'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.

18. Notices.

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given if delivered by regular U.S. mail, postage prepaid, to:

In the Case of DEDA:

Duluth Economic Development Authority  
418 City Hall  
411 West First Street  
Duluth, Minnesota, 55802  
Attn: Executive Director

In the Case of Developer:

Sunday, LLC  
107 Hughitt Avenue  
Superior, WI 54880  
Attn: Wendy Snyder

19. Subordination

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

20. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Developer to complete the Project. Therefore, Developer 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, Developer, the Project, 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 (each of the above, an "Assignment").

Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by the Developer. If any assignment of Developer's obligations under this Agreement is approved by the Executive Director, any such assignee shall explicitly assume the obligations of Developer under this Agreement and Developer remains principally liable for the performance of Developer's obligations under this Agreement.

21. Real Estate Brokers

DEDA and Developer each represent and warrant to the other that this Agreement is made and entered into as a result of direct negotiations between parties without the aid or assistance of any broker or other agent and each of the parties hereby represent and warrants to the other that they have entered into no agreement or made any undertaking of any kind whatsoever as a result of which any claim could properly be brought against the other for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

22. 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.

23. 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.

24. No Third Party Claims.

This Agreement is to be construed and understood solely as an Agreement between DEDA and Developer and 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 its terms and conditions, which, as between DEDA and Developer, may be waived at any time by mutual agreement between DEDA and Developer.

25. Severability.

In the event any provision of this Agreement 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.

26. Amendments.

Any amendments 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.

27. Entire Agreement.

This Agreement constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

28. 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



This Instrument Drafted By:  
Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
411 West First Street  
Duluth, Minnesota 55802  
(218) 730-5490

I:\ATTORNEY\DEDA (015)\Development Agreements (DA)\Sunday, LLC (20-0115)\Land Sale Agreement 2-7-20 Final.docx

**RESOLUTION 20D-20**

**RESOLUTION AUTHORIZING CONVEYANCE OF OLD RAILROAD PROPERTY  
IN LINCOLN PARK TO THE STATE OF MINNESOTA.**

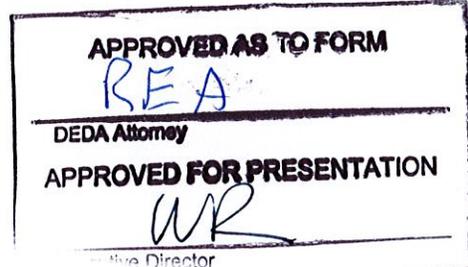
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that

1. DEDA has determined that the conveyance to the State of Minnesota of the property legally described on Exhibits A and B attached hereto and made a part hereof (the "Property") is necessary to the redesign and reconstruction of the Twin Ports Interchange Project by MnDOT and is therefore in the best interests of the City and its people.
2. DEDA further finds that that the conveyance will further the general plan for economic development of the entire City.
3. The Property has a fair market value of \$00.00.
4. The proper DEDA officials are hereby authorized convey the Property legally described in Exhibits A and B attached hereto to the State of at no cost.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize DEDA to convey certain of its property in Lincoln Park to the MnDOT for its use in the redesign and reconstruction of the Twin Ports Interchange (the "can of worms").

The property in question is generally located east of Highway 53, south of Michigan Street and Lower Michigan Street, west of 22<sup>nd</sup> Avenue West and north of I-35. It was originally acquired in the 1990's as part of the Soo Line Railroad property acquisition which facilitated the development of "Lower Michigan Street" through Lincoln Park. The interest held by DEDA is a reversionary right which has no value.

MnDOT has determined that they need to acquire the property as part of the Twin Ports Interchange redesign and reconstruction project. As MnDOT needs it for the Twin Ports Interchange Project, a project which will benefit the City and the entire area, economically as well as in terms of safe and convenient transportation, conveying this property to them will represent the highest and best use of the property.



# RIGHT OF WAY PARCEL LAYOUT



MINNESOTA DEPARTMENT OF TRANSPORTATION

Topographic Information required: Proposed R/W line & access taking.

Lot lines & dimensions.

Show north arrow.

Outline & location of buildings & Improvements. Streets or highway frontage.

C.S. 6982(35=390)906

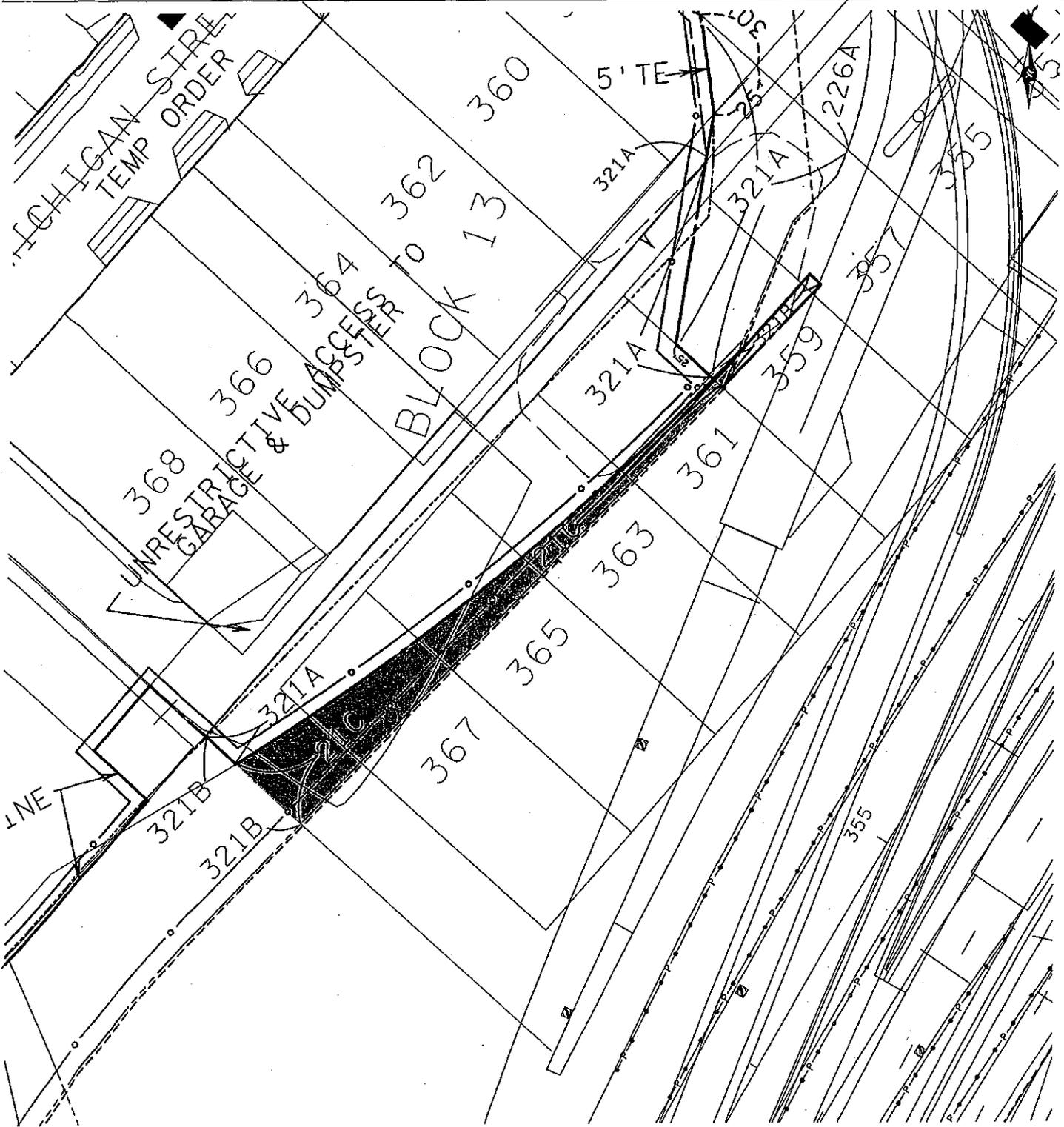
S.P. 6982-322

COUNTY ST LOUIS

PARCEL NO. 21C

OWNER PIRKOLA / DEDA

Scale 1" = 50 ft.



Layout sketch by L PEARSON

Date REV 08/06/19

Parcel No. 21C

# Duluth Economic Development Authority

January, 2020 Cash Activity - all DEDA Funds

ACCUMULATED TRANSACTION LISTING, G/L Date Range 01/01/20 - 01/31/20 (as of 2/11/2020)

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
<b><u>FUND 860 - OPERATING FUND</u></b>				<b>Beginning Balance</b>	<b>2,676,531.41 TB</b>
01/03/20	2020-00000126	RA	PayGrpOreillyLLC	437.09	Deda Lease Payment
01/08/20	2020-00000254	RA	Costco Wholesale	245.00	Invoice #2019-00000358
01/09/20	2020-00000289	GL	Clear Due To/From Prior to Posting Pay 1	(100.26)	
01/13/20	2020-00000298	AP	Bay West, Inc.	(650.00)	Spirit Landing EDR Project
01/13/20	2020-00000298	AP	Ehlers and Associates Inc	(7,500.00)	C19-860-902-Economic development and TIF professional services
01/13/20	2020-00000298	AP	Federal Express Corp	(7.08)	Freight Charges
01/13/20	2020-00000298	AP	SAS Associates	(5,663.75)	19 860 926 Downtown Waterfront Public Investment Plan
01/13/20	2020-00000298	AP	SAS Associates	(4,477.50)	19 860 926 Downtown Waterfront Public Investment Plan
01/13/20	2020-00000366	GL	Clear Due To/From Prior to Posting Pay 1	(33,333.33)	
01/15/20	2020-00000459	AP	Noah Hobbs	35.00	DEDA 4/24
01/17/20	2020-00000554	RA	Interstate Parking Services LLC	(20,347.92)	Parking Ramp Revenue/Expense December 2019
01/21/20	2020-00000520	AP	Noah Hobbs	(35.00)	Replacement of check 183388 5/13/19
01/21/20	2020-00000520	AP	Duluth Airport Authority	(354.00)	DAA Land Lease Phase 1 Lots 18/19 Dec 2019 Balance
01/21/20	2020-00000520	AP	Duluth Airport Authority	(548.00)	DAA Land Lease Lots Phase II 20/21 Dec 2019 Balance
01/21/20	2020-00000520	AP	Federal Express Corp	(65.48)	Roers FedEx Shipment
01/21/20	2020-00000520	AP	Duluth News Tribune	(40.80)	DEDA Advertising 1/8/20
01/21/20	2020-00000520	AP	Duluth News Tribune	(11.60)	DEDA Advertising 1/9/20
01/21/20	2020-00000520	AP	Duluth News Tribune	(11.60)	DEDA Advertising 1/9/20
01/21/20	2020-00000520	AP	Duluth News Tribune	(11.60)	DEDA Advertising 1/9/20
01/21/20	2020-00000520	AP	Duluth News Tribune	(11.60)	DEDA Advertising 1/9/20
01/31/20	2020-00000903	GL	Investment Earnings for January	4,054.00	Investment Earnings for January
<b><u>FUND 860 - OPERATING FUND</u></b>				<b>Ending Balance - 1-31-20</b>	<b>2,608,132.98 TB</b>
<b><u>FUND 861 - DEBT SERVICE</u></b>				<b>Beginning Balance</b>	<b>914,874.54 TB</b>
01/13/20	2020-00000298	AP	NorShor Theatre LLC	(71,926.23)	2nd Half TIF 2019
01/13/20	2020-00000298	AP	Sherman Associates, Inc.	(89,907.79)	2nd Half TIF 2019
01/27/20	2020-00000742	GL	receipt cash for 3rd tax pmt from SLC for 2019 (Jan-2020 Pmt)	81,993.90	receipt cash for 3rd tax pmt from SLC for 2019 (Jan-2020 Pmt)
01/31/20	2020-00000903	GL	Investment Earnings for January	1,274.00	Investment Earnings for January
<b><u>FUND 861 - DEBT SERVICE</u></b>				<b>Ending Balance - 1-31-20</b>	<b>836,308.42 TB</b>
<b><u>FUND 865 - CAPITAL PROJECTS</u></b>				<b>Beginning Balance</b>	<b>2,562,248.72 TB</b>
01/31/20	2020-00000903	GL	Investment Earnings for January	3,938.00	Investment Earnings for January
<b><u>FUND 865 - CAPITAL PROJECTS</u></b>				<b>Ending Balance - 1-31-20</b>	<b>2,566,186.72 TB</b>
<b><u>FUND 866 - MRO FACILITY</u></b>				<b>Beginning Balance</b>	<b>692,305.98 TB</b>
01/01/20	2020-00000128	MB	AAR Aircraft Services, Inc	36,510.76	Building Rent/MRO Facility - January 2020
01/06/20	2020-00000171	RA	AAR Aircraft Services, Inc	730.22	Invoice #2020-00000011; Balance on Customer Acct
01/27/20	2020-00000745	RA	AAR Aircraft Services, Inc	9,251.74	Invoice #2020-00000025 & Invoice #2020-00000026
01/31/20	2020-00000903	GL	Investment Earnings for January	1,111.00	Investment Earnings for January
<b><u>FUND 866 - MRO FACILITY</u></b>				<b>Ending Balance - 1-31-20</b>	<b>739,909.70 TB</b>
<b><u>FUND 867 - STOREFRONT LOANS</u></b>				<b>Beginning Balance</b>	<b>176,732.15 TB</b>
01/09/20	2020-00000314	RA	City of Duluth, US Bank singlepoint deposit	659.08	DEDA -Women in Construction Loan payment
01/21/20	2020-00000589	RA	Alerus Financial	1,037.10	DEDA payment, Old City Hall LLC
01/31/20	2020-00000903	GL	Investment Earnings for January	272.00	Investment Earnings for January
<b><u>FUND 867 - STOREFRONT LOANS</u></b>				<b>Ending Balance - 1-31-20</b>	<b>178,700.33 TB</b>

**RESOLUTION 20D-13**

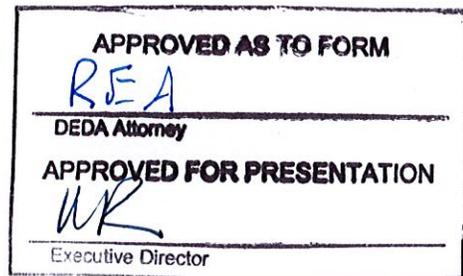
**RESOLUTION AUTHORIZING AN AMENDMENT  
TO THE NOTE WITH PIER B HOLDING LLC.**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that DEDA hereby agrees that the date for payment of the entire principal amount and accrued, unpaid interest payable pursuant to that certain Note from Pier B Holding LLC, Borrower, to DEDA, Lender dated February 20, 2015 in the original principal amount of \$610,000 is hereby extended from February 20, 2020 to May 20, 2020, provided that interest shall continue to accrue during the term of said extension as provided for in the Note.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE:

The purpose of this resolution is to authorize a 90 day extension of "balloon payment" date on Pier B's land purchase note in order to facilitate the refinancing of the project.

In 2014, DEDA entered into a development agreement with Pier B Holding LLC for the development of Silos at Pier B Project. As an element of the financing of the project, DEDA sold the developer its property between Bayfront Festival Park and the LaFarge Cement Company property which the developer owned in exchange for a note which was scheduled to be repaid by February 20, 2020.

The developer is in the process of refinancing the project, which refinancing will result in the repayment in full of the note plus accrued interest but complications in the refinancing process has resulted in the need to extend the date for payment. This resolution would authorize a 90 day extension to facilitate the refinancing. Interest on the note would continue to accrue during the extension.

## **RESOLUTION 20D-14**

### **RESOLUTION AUTHORIZING FORGIVENES OF LOAN TO HRA PERTAINING TO THE SEAWAY (ESMOND) HOTEL PROJECT.**

WHEREAS, due to the dangerously deteriorated condition of the old Seaway Hotel property in the Lincoln Park Business District (the "Property"), endangering the wellbeing of over 70 residents of the building, the City of Duluth Building official was faced with the duty to order the demolition of the building which would result in the residents being forced to find other living accommodations; and

WHEREAS, no suitable living accommodations were then available to these residents which would have resulted in their being homeless; and

WHEREAS in order to prevent this from occurring, on March 26, 2014 the Duluth Economic Development Authority ("DEDA") entered into an agreement (DEDA Contract No. 14-865-732 and as amended, hereinafter the "Loan Agreement") with the Housing and Redevelopment Authority of Duluth, Minnesota ("HRA") pursuant to which HRA would acquire the Property and rehabilitate it to a level making it safe for residential occupancy and would thereafter operate it as affordable rental housing for the existing residents and persons similarly situated until replacement housing could be developed and DEDA would lend \$230,000 to HRA to fund the acquisition of the Property; and

WHEREAS, HRA has performed all of its obligations under the Loan Agreement at no little cost to itself and has caused to be developed replacement housing available to the tenants of the Property at affordable rates and so now is preparing to dispose of the Property for private redevelopment; and

WHEREAS, January 28, 2020, the HRA Board of Commissioners approved a "Contract for Private Development" (the "Development Agreement") for the sale of the Property to MN-OZA Duluth I, Limited Liability Limited Partnership and for its redevelopment, which DEDA has determined will be a positive step to the development and growth of the Lincoln Park Business District and therefore in support of DEDA's mission of fostering economic development in the City of Duluth; and

WHEREAS, in order to allow the proposed redevelopment to be financially feasible, it is necessary for DEDA to forgive the amount of its loan to HRA as described in the Loan Agreement and HRA has requested that DEDA so forgive that loan in order to facilitate said redevelopment;

WHEREAS, DEDA is willing to forgive said loan in order to facilitate the redevelopment of the Property substantially in conformance with development described in the Development Agreement.

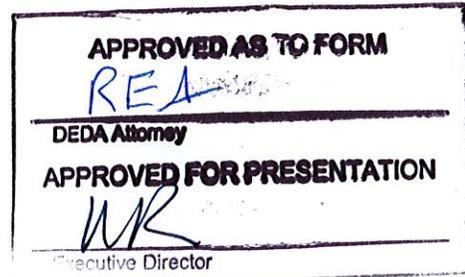
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that DEDA hereby agrees that upon HRA closing on the conveyance of the Property under

substantially the terms of and substantially in conformance with the terms of the Development Agreement, DEDA will forgive the loan to HRA as set forth in the Loan Agreement.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE:

The purpose of this resolution is to commit DEDA to forgive the loan it made to HRA to fund the acquisition of the old Seaway Hotel, now called the Esmond Building, as part of a package to allow HRA to acquire the property and to rehabilitate it to render it safe for residential use on a temporary basis until replacement housing could be funded and constructed. This was necessary to address conditions on the property which otherwise would have made it necessary for the City Building Official to order demolition of the building, displaced over 70 low income residents for whom affordable housing was not otherwise available.

HRA was able to secure State funding to pay for the necessary rehabilitation of the building but they did not have funds available or an alternative funding source to purchase the building so DEDA loaned them \$230,000 to acquire the building.

Since that time, HRA has acquired the building, caused it to be rehabilitated to make it safe and has operated it as affordable housing, while at the same time, causing replacement housing in the form of the Garfield Square Development to be developed to provide high-quality replacement housing for the remaining tenants of the Esmond. During this time, HRA has indicated that its costs of operating the Esmond has exceeded revenues generated by it by over \$700,000.

Now that replacement housing has been developed and all of the residents have been relocated, HRA is seeking to sell the property for redevelopment. They have reached tentative agreement with a developer, MN-OZA Duluth I, Limited Liability Limited Partnership, to convey the property to them in return for them redeveloping it into approximately 30 units of housing and approximately 8,500 square feet of first-level retail.

In order to make this development financially feasible, it will be necessary for DEDA to

agree to forego repayment of its loan to the initial project. As the first objective of the initial project, keeping this housing available to its tenants at affordable rates, has been accomplished and as the proposed development, if implemented, will be in line with DEDA's mission as it related to addressing blight and encouraging reinvestment in the Lincoln Park Business District, Staff recommends that upon there being a commitment to the redevelopment, the loan be forgiven.

**RESOLUTION 20D-15**

**RESOLUTION AUTHORIZING CONVEYANCE OF  
EASEMENT OVER OLD RAILROAD PROPERTY  
IN LINCOLN PARK TO THE CITY OF DULUTH.**

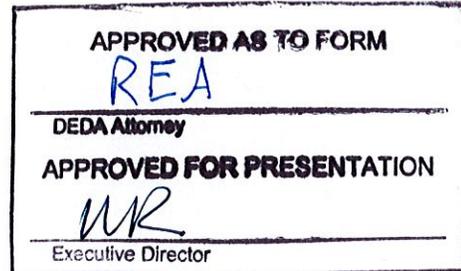
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that

1. DEDA has determined that the conveyance of easements as described in Exhibit A, attached hereto and made a part hereof, over the property described therein to the City of Duluth is necessary to the transportation and utilities needs of Lincoln Park neighborhood and the city at large and is therefore in the best interests of the City and its people.
2. DEDA further finds that that the conveyance will further the general plan for economic development of the entire City.
3. The proper DEDA officials are hereby authorized convey the easement legally described in Exhibit A to the City of Duluth at no cost.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize DEDA to convey an easements over certain of its property in Lincoln Park to the City for road and utility purposes prior to considering conveyance of the remainder of DEDA's interest in the remainder of the property to MnDOT for its use in the redesign and reconstruction of the Twin Ports Interchange (the "can of worms").

The general location of the property affected by the proposed easement is south of Michigan Street and west of 24<sup>th</sup> Avenue West. It was originally acquired in the 1990's as part of the Soo Line Railroad property acquisition which facilitated the development of "Lower Michigan Street" through Lincoln Park.

MnDOT has determined that they need to acquire the underlying fee interest in the property as part of the Twin Ports Interchange redesign and reconstruction project. The City has need of the easements described above because the underlying property includes an access road and City-owned utilities.

As MnDOT needs the underlying property for the Twin Ports Interchange Project, DEDA needs to convey the subject easements to the City so that those interests are not lost.

# RIGHT OF WAY PARCEL LAYOUT



MINNESOTA DEPARTMENT OF TRANSPORTATION

Topographic Information required: Proposed R/W line & access taking.

Lot lines & dimensions.

Show north arrow.

Outline & location of buildings & improvements. Streets or highway frontage.

C.S. 6982(35=390)906

S.P. 6982-322

COUNTY ST LOUIS

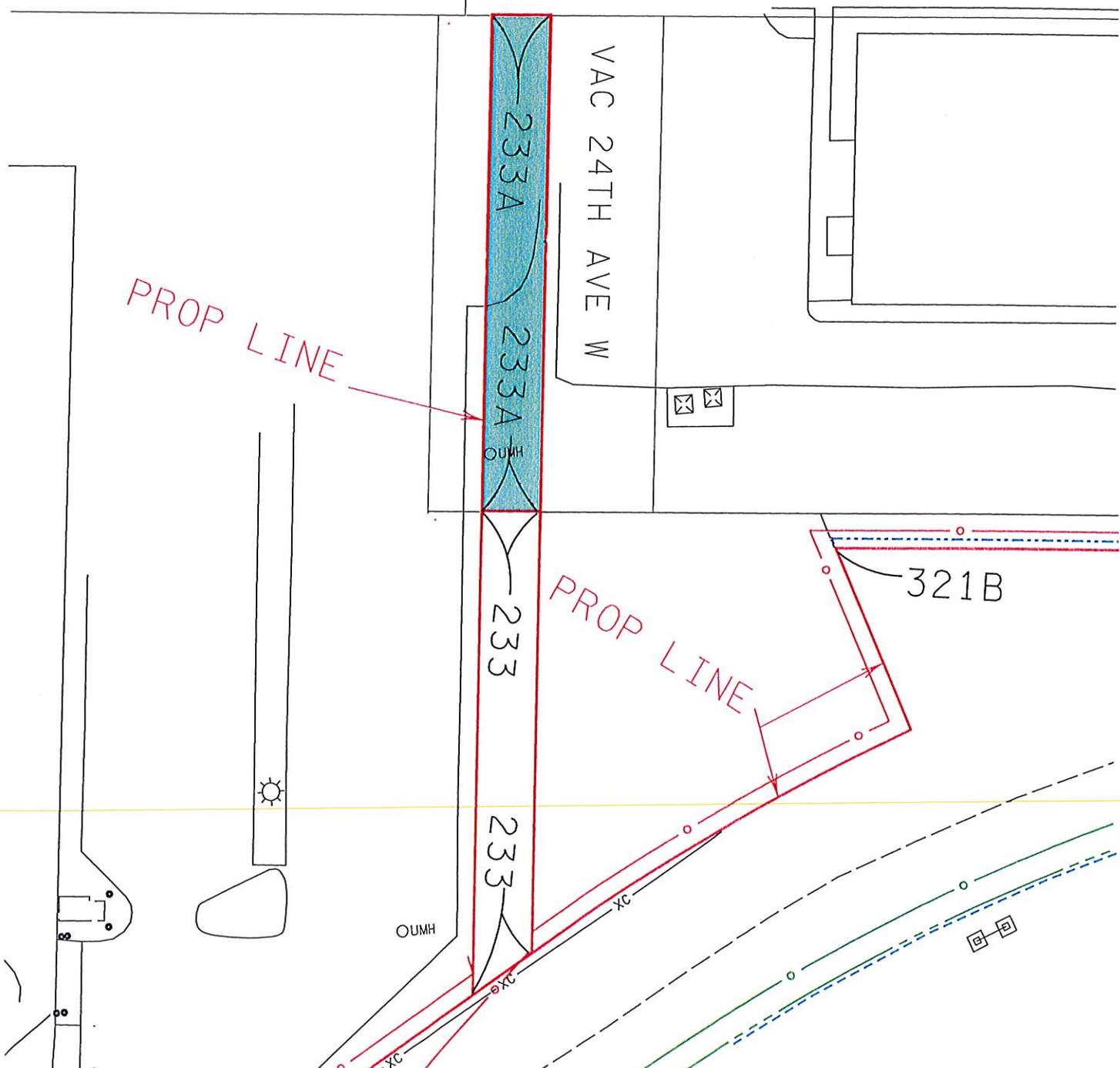
PARCEL NO. 233A

OWNER DEDA

Scale 1" = 40 ft.

C.S. 6982(35=390)906 S.P. 6982-322

DULUTH PROPER SECOND DIVISION									
PARCEL NUMBER	OWNER	CONTIGUOUS PROPERTY	ENTIRE TRACT WITHOUT ROADS	NEW T.H. R/W	BALANCE	TEMPORARY EASEMENT		TORRENS	PERMANENT R/W INTEREST
			SQ. FEET	SQ. FEET	SQ. FEET	SQ. FEET	EXPIRES	SQ. FEET	
233A	DEDA	Pt LOT 2 & VAC AVE	2380	2380	0				FEE



## RESOLUTION 20D-16

### RESOLUTION AUTHORIZING ACQUISITION OF CERTAIN REAL PROPERTY FROM THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA RELATED TO THE REBUILD DULUTH PROGRAM

RESOLVED, by the Duluth Economic Development Authority ("DEDA"), that the proper DEDA officials are hereby authorized to acquire by quitclaim deed the below-described properties from the Housing and Redevelopment Authority of Duluth, Minnesota ("HRA") as part of the Rebuild Duluth Program at no cost to DEDA:

Westerly half (W'ly ½) of Lot Four (4), Block Three (3), BRYANT  
ADDITION TO DULUTH FIRST DIVISION; and

Lots Eleven (11) and Twelve (12), Block Six (6), HOMEWOOD  
ADDITION TO DULUTH; and

FURTHER RESOLVED by DEDA, that DEDA hereby retroactively authorizes, at no cost to DEDA and as part of the Rebuild Duluth Program, the acquisition by quitclaim deed from the HRA of those properties recorded in the St. Louis County Recorder's Office as document numbers shown below and further ratifies the recording of said deeds:

North 31 feet (N 31') of South Sixty feet (S 60') of Lots One (1), Two (2), Three (3), Four (4) and Four and one-half (4 ½), Block One Hundred Eighty-nine (189), WEST DULUTH, SEVENTH DIVISION [filed for record in the Office of the St. Louis County Recorder on February 14, 2020, as Document No. 01373651]; and

Lot One (1), Block Seventy-three (73), WEST DULUTH SECOND DIVISION [filed for record in the Office of the St. Louis County Recorder on February 14, 2020, as Document No. 01373650]; and

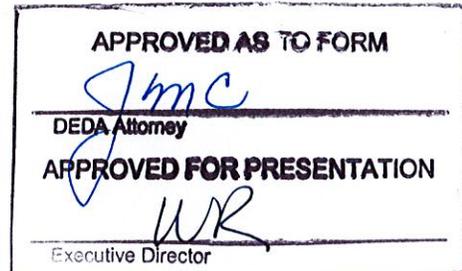
Westerly Thirty-seven and one-half feet (W'ly 37 ½') of the Easterly Sixty-two and one-half feet (E'ly 62 ½') of Lots One (1), Two (2) and Three (3), Block One (1), WEST DULUTH FIRST DIVISION [filed for record in the Office of the St. Louis County Recorder on February 14, 2020, as Document No. 01373649]; and

Lot Twenty-Three (23), East Fourth Street, DULUTH PROPER  
FIRST DIVISION [filed for record in the Office of the St. Louis County  
Recorder on February 14, 2020, as Document No. 01373648].

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of  
February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE: This resolution authorizes the acquisition of certain tax-forfeited parcels in the Spirit Valley, Hillside, Central Hillside, Kenwood, Irving and Lincoln Park neighborhoods of Duluth for purposes assembling lots for the "Rebuild Duluth" program which was announced in Mayor Larson's 2019 State of the City speech. The concept of the program is to offer between 10 and 15 parcels of land free of charge to builders and developers who come forward with viable plans to construct housing on the sites. The intended effect is to create new economic opportunity for the construction industry, expand the tax base of existing neighborhoods, better utilize existing infrastructure, and create new housing in the city. Additional parcels are being acquired from the State of Minnesota and the City of Duluth. Four of the deeds from the HRA were filed in the St. Louis County Recorder's Office prior to DEDA authorizing the acquisition, and therefore this resolution retroactively authorizes the acquisition and ratifies the recording of the deed.

**RESOLUTION 20D-17**

**RESOLUTION AUTHORIZING A LAND SALE AGREEMENT WITH  
SUMDAY, LLC, IN THE AMOUNT OF \$20,200 RELATED TO PROPERTY  
AT THE FORMER ATLAS CEMENT PLANT SITE**

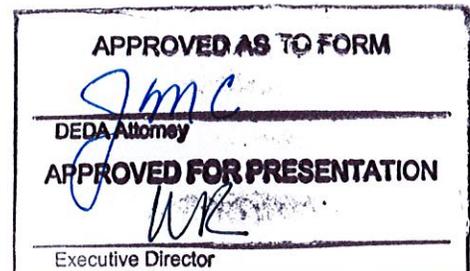
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that DEDA does hereby make the following determinations and findings:

- A. That the sale of property to Sumday, LLC is in the best interests of the City of Duluth and its people and that the transaction furthers the general plan for economic development in the area.
  - B. That, after not less than ten (10) or more than twenty (20) days' published notice, the public hearing was held in City Council Chambers, Third Floor City Hall, Duluth, Minnesota at or shortly after 5:15 p.m. on February 26, 2020, regarding the proposed sale.
  - C. That the sale of the property described below to Sumday, 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 Land Sale Agreement, substantially in the form of the copy attached hereto, with Sumday, LLC, for the sale of that property in St. Louis County, Minnesota, legally described below for the sum of Twenty Thousand Two Hundred (\$20,200), said sum to be payable into Fund 0860:
- Lot 1, Block 2, Atlas Industrial Park (the "Property").
3. That the proper DEDA officials are hereby further authorized to execute all documents necessary to effectuate the sale of the Property to Sumday, LLC.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

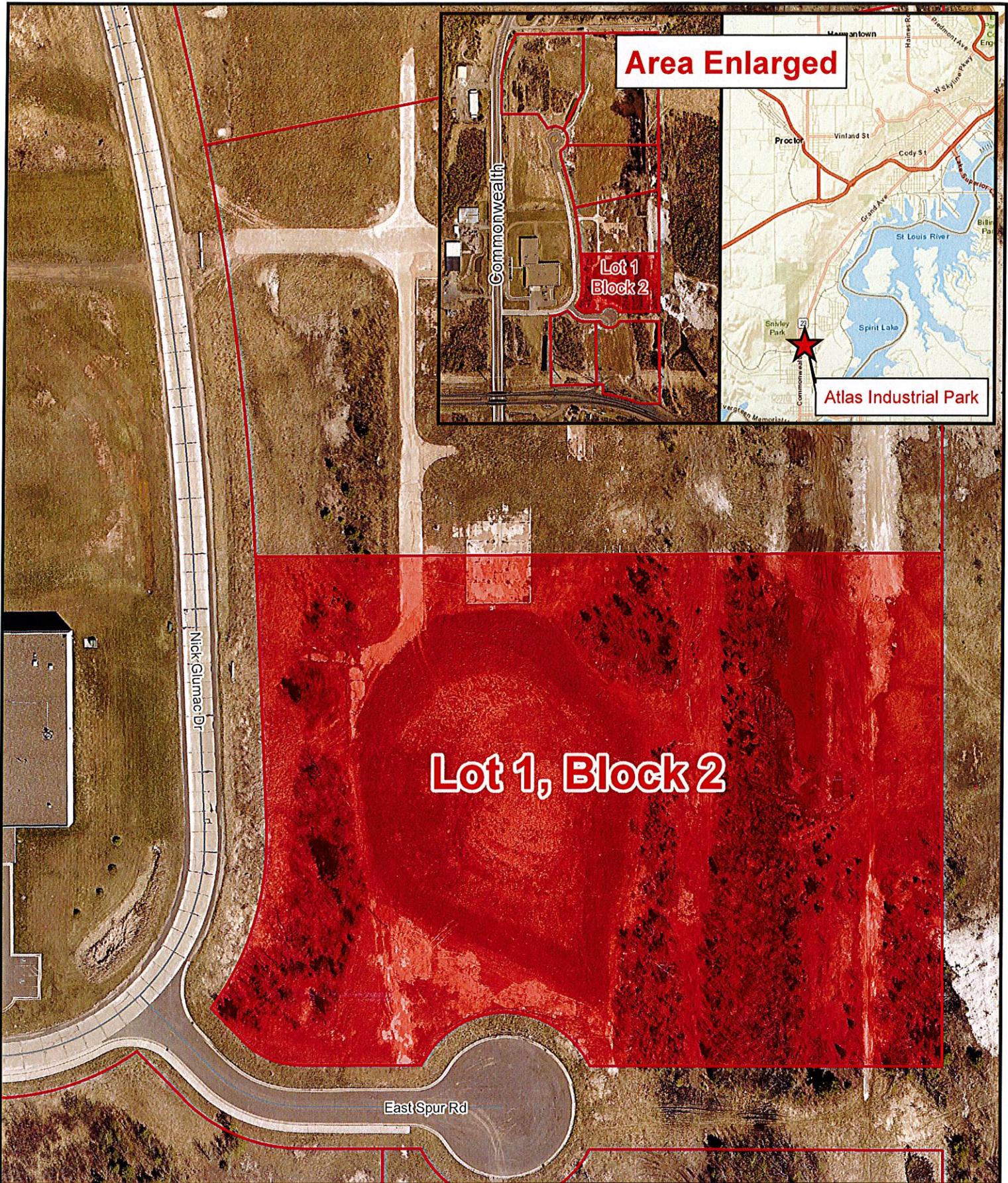
\_\_\_\_\_  
Executive Director



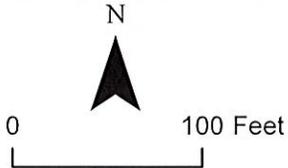
**STATEMENT OF PURPOSE:** The purpose of this resolution is to authorize the sale of certain property at the former Atlas Cement Plant site depicted on the attachment to this resolution. The subject parcel is a part of the DEDA-owned Atlas Industrial Park. The Land Sale Agreement is entered into between Sundry, LLC dba TruGreen and DEDA for the purpose of redeveloping the parcel for commercial development.

It is anticipated that this Land Sale Agreement will result in 7 full-time-equivalent jobs created in Duluth, with an unburdened wage of \$14 per hour. The Land Sale agreement requires that within one year construction must begin on a 5,000 square-foot warehouse and office facility, with a minimum construction cost of \$250,000, to support the lawn, tree, and shrub care business. Construction is required to be completed by November 1, 2021.

DEDA agrees to contract with an environmental services firm to conduct a Phase I and, if necessary, a Phase II environmental assessment of the property, subject to approval from the U.S. Environmental Pollution Agency that the cost of the Phase I and Phase II environmental assessments are eligible to be paid through a City of Duluth-managed EPA Grant. In the event the Phase II assessment reflects an environmental condition on the property that is not acceptable to Sundry, it may terminate the Land Sale Agreement within 30 days of receipt the Phase II environmental assessment report. DEDA is not responsible for any contaminant remediation.



**Lot 1, Block 2**



PROPERTY LOCATION  
ATLAS INDUSTRIAL PARK  
LOT 1, BLOCK 2  
LAND SALE AGREEMENT WITH  
SUMDAY, LLC

## LAND SALE AGREEMENT

THIS AGREEMENT entered into by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469, ("DEDA"), and Sumday, LLC, a Minnesota limited liability company ("Developer").

WHEREAS, Developer desires to acquire certain DEDA-owned property at the Atlas Industrial Park for purpose of constructing a 5,000 square foot building consisting of warehouse and office space for its lawn care maintenance and treatment business; and

WHEREAS, it is anticipated that Developer will create jobs in Minnesota through the relocation from Wisconsin of 7 FTEs for at least two years with unburdened wages of \$14 per hour; and

WHEREAS, DEDA is desirous of assisting and cooperating with Developer in fostering its project and finds that the conveyance of the DEDA-owned property to Developer is in the best interests of the City and its people and that the transaction furthers DEDA's general plan for development in the area.

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

1. Developer Application Fee.

Pursuant to DEDA's fee schedule, Developer has paid a non-refundable application fee of \$1,000.00.

2. Sale of the Property.

The proper DEDA officials are hereby authorized to sell to Developer for the amount of \$20,200 payable into DEDA Fund 860-860-8640-4640, and Developer shall accept, that property located in St. Louis County Minnesota being more particularly described as:

Lot 1, Block 2, Atlas Industrial Park (the "Property")

3. Phase I and II Environmental Assessment Contingency.

DEDA agrees to contract with an environmental services firm to conduct a Phase I and, if necessary, a Phase II environmental assessment of the Property, subject to approval from the U.S. Environmental Pollution Agency ("EPA") that the cost of the Phase I and Phase II environmental assessments ("Assessments") are eligible to be paid through a City of Duluth-managed EPA Grant. If the costs of the Assessments are approved, DEDA shall provide a copy of the Phase I environmental report to Developer, and within thirty days thereafter, Developer shall have provided to DEDA a detailed site plan identifying specific locations of all site improvements to inform the Phase II environmental assessment. Upon completion of the Phase II environmental assessment, DEDA shall provide a copy of the Phase II environmental assessment report to Developer. In the event the Phase II assessment reflects an environmental condition on the Property that is not acceptable to Developer, Developer may terminate this Agreement by delivering written notice of termination to DEDA within 30 days of receipt the Phase II environmental assessment report. If Developer terminates this Agreement

pursuant to this Section, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Developer fails to terminate this Agreement pursuant to this Section, the parties shall proceed to closing unless terminated as contemplated by Section 4 of this Agreement.

In the event the EPA does not approve the costs of any part of the Assessments, DEDA shall not be required to conduct the Assessments of the Property, and the parties shall proceed to closing unless terminated as contemplated by Section 4 of this Agreement. Alternatively, Developer may determine to conduct its own Assessments of the Property, and agrees to provide DEDA a copy of all subsequent reports. In the event Developer's Phase II assessment reflects an environmental condition on the Property that is not acceptable to Developer, Developer may terminate this Agreement by delivering written notice of termination to DEDA within 30 days of the date of the Phase II environmental assessment report. If Developer terminates this Agreement pursuant to this Section, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Developer fails to terminate this Agreement pursuant to this Section, the parties shall proceed to closing unless terminated as contemplated by Section 4 of this Agreement.

#### 4. Title Commitment.

In the event this Agreement has not been terminated as set forth in Section 3, and upon the Developer's request and at the Developer's cost, DEDA agrees to obtain a title commitment. In the event that the title commitment reflects that title to the Property is not in a condition that is acceptable to Developer, Developer may object to the title defects by specifying Developer'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 may decline to fix any title defects by delivering written notice to Developer within 10 days of receipt of Developer's title objections. If DEDA chooses to fix the title defects, DEDA shall have forty-five (45) days after giving notice to Developer within which to cure the title defects after which the parties shall proceed to closing subject to the terms and conditions of this Agreement. If DEDA declines to fix the title defects, Developer 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 Developer terminates this Agreement pursuant to this Section, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Developer fails to terminate this Agreement pursuant to this Section, the parties shall proceed to the closing as contemplated by this Agreement.

#### 5. Closing

The closing on the conveyance of the Property from DEDA to Developer shall occur at a time and location mutually agreeable to the parties but in no event later than July 1, 2020 (the "Closing Date"). DEDA shall deliver possession of the Property on the Closing Date.

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 obligation to one another pursuant to this Agreement. Notwithstanding the above, the Closing Date may

be extended if DEDA's Executive Director ("the Executive Director") and Developer mutually agree to do so.

6. Quitclaim Deed

On the Closing Date, DEDA shall deliver a quitclaim deed to Developer conveying DEDA's interest in the Property to Developer. The conveyance of title to the Property shall be subject to covenants, conditions, restrictions, declarations, easements and encumbrances of record; the reservation of minerals and mineral rights by the State of Minnesota; 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.

7. Deed Covenant

The quitclaim deed shall also contain, as a covenant running with the land, 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 cancellation of the deed. DEDA will file an appropriate release or satisfaction of such covenants upon completion of construction of the Project described below in accordance with the approved plans and specifications as evidenced by the issuance of a certificate of occupancy by the City's Construction Services and Inspections Division ("Certificate of Occupancy").

8. The Project

Developer hereby agrees to construct on the Property a building of not less than 5,000 square feet with a total construction cost of not less than \$250,000 consisting of warehouse and office space for its lawn care maintenance and treatment business (the "Project"), and its use of the Property shall be for purposes of the Project. Developer further agrees that the Project shall conform to the City of Duluth's Engineering Guidelines and Unified Development Chapter, including but not limited to, storm water policies and requirements, driveway entrance requirements, and parking lot design standards.

9. Plans and Specifications

Prior to the commencement of any construction work on the Project, Developer shall have presented to DEDA plans and specifications for the Project. Such plans shall be subject to DEDA's approval in the form of approval of the Executive Director in writing, which approval shall not be unreasonably withheld. In the event of any proposed change in the plans and specifications after the initial approval by the Executive Director, said proposed change shall be likewise subject to the approval of the Executive Director.

10. One-Year and November 1, 2021 Deadlines

Within one year of the date of conveyance of the Property from DEDA to Developer, Developer shall have commenced construction of the Project. The commencement of construction shall be demonstrated by the issuance of a building permit and/or filling and grading permit and the filing of an affidavit with the Executive Director, executed by Developer, to which are attached pictures of commenced construction. On or before November 1, 2021, Developer shall have completed construction of the Project as

evidenced by Developer's submittal to the Executive Director of a Certificate of Occupancy issued by the City of Duluth's Construction Services and Inspections Division. If Developer fails to meet either the one-year deadline or the November 1, 2021 deadline as stated above, DEDA may cancel the sale and title to the Property shall revert to DEDA, and upon written notice from DEDA, Developer agrees to reconvey the Property to DEDA, free and clear of all liens and encumbrances.

11. 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.

12. Recordation.

Immediately upon delivery of the quitclaim deed conveying the Property to Developer, Developer agrees to record this Land Sale Agreement and the quitclaim deed in the office of the St. Louis County Registrar of Titles and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA an executed original of this Agreement and the quitclaim deed showing the date and document numbers of record, or duly certified copies of the filed originals.

13. Environmental Indemnification.

Developer hereby agrees that for itself, its successors and assigns, it will indemnify and save DEDA and its officers, agents, servants and employees and any person who controls DEDA 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. Indemnification granted hereby 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 if DEDA chooses to require indemnification of the same, 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 Developer to DEDA pursuant to this Section is intended to run only to the benefit of DEDA and is not intended to, nor shall it, inure to the benefit of any third party.

14. Assumption of Risk

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

15. No Representations by DEDA

Without limitation, Developer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Developer 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. Developer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Developer acknowledges and agrees that, to the maximum extent permitted by law, Developer is purchasing the Property in its "AS-IS" condition. This Section 15 shall survive the closing, cancellation or termination of this Agreement for any reason.

16. Taxes and Costs

There are no property taxes due or special assessments assessed against the Property. In the event that any outstanding property taxes or special assessments become assessed against the Property, DEDA shall pay all real estate taxes and installments of special assessments assessed against the Property before and up to the Closing Date, and Developer shall pay all real estate taxes and installments of special assessments assessed against the Property on and after the Closing Date. Developer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, any title company costs and any other costs and expenses required to effectuate the conveyance and acquisition contemplated by this Agreement. The parties intend that DEDA will not incur any out of pocket expenses in relation to the conveyance and acquisition contemplated by this Agreement or in relation to the Project.

17. Default and Remedies.

In the event that Developer fails to perform or to comply with any of the terms, covenants or conditions of this Agreement, and said failure to so perform or comply shall continue for a term of thirty (30) days after notice from DEDA to Developer of such nonperformance or noncompliance, Developer shall be in default of its obligations hereunder and DEDA may, at its option, and in addition to the remedies set forth in Sections 5, 7, or 10, exercise any one of more of the following rights and remedies. The remedies provided for under this Section shall be deemed to be cumulative and nonexclusive 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 Developer hereunder 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 any other obligation of Developer hereunder and, to be effective, any waiver of any Developer default hereunder shall be in writing by DEDA.

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

b. DEDA may seek and be entitled to receive reconveyance of the Property from Developer, free and clear of all liens and encumbrances whatsoever.

c. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Developer'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.

18. Notices.

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given if delivered by regular U.S. mail, postage prepaid, to:

In the Case of DEDA:

Duluth Economic Development Authority  
418 City Hall  
411 West First Street  
Duluth, Minnesota, 55802  
Attn: Executive Director

In the Case of Developer:

Sunday, LLC  
107 Hughitt Avenue  
Superior, WI 54880  
Attn: Wendy Snyder

19. Subordination

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

20. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Developer to complete the Project. Therefore, Developer 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, Developer, the Project, 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 (each of the above, an "Assignment").

Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by the Developer. If any assignment of Developer's obligations under this Agreement is approved by the Executive Director, any such assignee shall explicitly assume the obligations of Developer under this Agreement and Developer remains principally liable for the performance of Developer's obligations under this Agreement.

21. Real Estate Brokers

DEDA and Developer each represent and warrant to the other that this Agreement is made and entered into as a result of direct negotiations between parties without the aid or assistance of any broker or other agent and each of the parties hereby represent and warrants to the other that they have entered into no agreement or made any undertaking of any kind whatsoever as a result of which any claim could properly be brought against the other for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

22. 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.

23. 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.

24. No Third Party Claims.

This Agreement is to be construed and understood solely as an Agreement between DEDA and Developer and 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 its terms and conditions, which, as between DEDA and Developer, may be waived at any time by mutual agreement between DEDA and Developer.

25. Severability.

In the event any provision of this Agreement 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.

26. Amendments.

Any amendments 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.

27. Entire Agreement.

This Agreement constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

28. 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



This Instrument Drafted By:  
Joan M. Christensen  
Assistant City Attorney  
440 City Hall  
411 West First Street  
Duluth, Minnesota 55802  
(218) 730-5490

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**RESOLUTION 20D-18**

**RESOLUTION AUTHORIZING AN AGREEMENT TO INSURE CERTAIN DEDA  
PROPERTY UNDER THE CITY OF DULUTH'S PROPERTY  
AND BOILER INSURANCE POLICIES  
IN AN AMOUNT NOT TO EXCEED \$712.00**

RESOLVED, by the Duluth Economic Development Authority (DEDA) that the proper DEDA officials are hereby authorized to enter into an Agreement, substantially in the form of that attached hereto (DEDA Contract No. \_\_\_\_\_) with the City of Duluth pursuant to which the MRO Building will be insured under the City of Duluth's property and boiler insurance policies for the period from February 16, 2020 to February 16, 2021, in an amount not to exceed \$24,500.00 payable from Fund 0866, Dept. 860, Obj. 5362.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE: This resolution authorizes DEDA to enter into an Agreement with the City of Duluth pursuant to which the DEDA-owned MRO Building will be insured under the City's property and boiler insurance policies. The City has a full blanket property policy with a \$100,000 deductible. DEDA will be listed as a lien holder on the policies. If DEDA were listed as a named insured, DEDA could be held responsible for premium payments should the City not pay them as well as for litigation related to City-owned buildings. The City is required to pay over to DEDA any claim settlements related to the DEDA property.

## RESOLUTION NO. 20D-19

### RESOLUTION APPROVING THE AMENDMENT AND REDESIGNATION OF EDUCATIONAL FACILITIES REVENUE NOTES, SERIES 2015, AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS

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

- Section 1. Definitions. The terms used herein, unless the context hereof or the rules of grammar and usage require otherwise, have the meanings assigned below:
- a. 2020 Assignment Agreement: the Amended and Restated Assignment Agreement to be entered into between the Issuer, the Purchaser and the New Borrower.
  - b. 2020 Loan Agreement: the Amended and Restated Loan Agreement to be entered into between the Issuer and the New Borrower and acknowledged by the Purchaser.
  - c. 2020 Mortgage: the Amended and Restated Mortgage Agreement to be entered into between the New Borrower and the Purchaser.
  - d. 2020 Security Agreement: the Amended and Restated Commercial Security Agreement to be entered into between the New Borrower and the Purchaser.
  - e. Act: collectively, Minnesota Statutes, Sections 469.152 through 469.165, as amended.
  - f. Assignment and Assumption Agreement: the Assignment and Assumption Agreement between the Original Borrower and the New Borrower and acknowledged by the Issuer and consented to by the Purchaser.
  - g. Authorized Officers: the President and Secretary of the Issuer.
  - h. Board of Commissioners: the governing body of the Issuer.
  - i. Bond Counsel: the law firm of Fryberger, Buchanan, Smith & Frederick, P.A. or any other firm of nationally-recognized bond counsel.
  - j. Borrowers: the New Borrower and the Original Borrower.
  - k. Code: the Internal Revenue Code of 1986, as amended.
  - l. County: St. Louis County, Minnesota.

- m. DEED: the Minnesota Department of Employment and Economic Development.
- n. Documents: the 2020 Loan Agreement, the 2020 Assignment Agreement, the 2020 Mortgage, the 2020 Security Agreement and any other documents required for the issuance of or to provide collateral for the Notes.
- o. Executive Director: the Executive Director of the Issuer.
- p. Issuer: the Duluth Economic Development Authority, a public body corporate and politic and political subdivision of the State.
- q. Issuer Documents: together, the 2020 Loan Agreement, the 2020 Assignment Agreement and the acknowledgement of the Assignment and Assumption Agreement.
- r. New Borrower: the College of St. Scholastica, Inc., the "Corporation" under the 2020 Loan Agreement.
- s. Notes: together, the Series A Note and the Series B Note.
- t. Original Assignment Agreement: the Assignment Agreement dated as of August 17, 2015, between the Issuer, the Original Borrower and the Purchaser.
- u. Original Borrower: Health Sciences Education Facility Corporation, the "Corporation" under the Original Loan Agreement.
- v. Original Documents: the Original Loan Agreement, the Original Assignment Agreement, the Original Mortgage, the Original Security Agreement and any other documents required for the issuance of or to provide collateral for the Notes.
- w. Original Loan Agreement: the Loan Agreement dated August 17, 2015, entered into between the Issuer and the Original Borrower, and assigned by the Issuer to the Purchaser pursuant to the Original Assignment Agreement.
- x. Original Mortgage: the Leasehold Mortgage Agreement dated August 17, 2015, from the Original Borrower to the Purchaser.
- y. Original Security Agreement: the Commercial Security Agreement dated August 17, 2015, from the Original Borrower to the Purchaser.
- z. Project: acquisition of an interest in land and constructing and equipping thereon an approximately 45,000 square foot, three-story educational

classroom and office building along with related site and parking improvements, all located at 940 Woodland Avenue in Duluth, Minnesota.

- aa. Purchaser: National Bank of Commerce, a national banking association, with an office located in Duluth, Minnesota, its successors and assigns.
- bb. Registrar: bond registrar and transfer agent for the Notes.
- cc. Series A Note: the Issuer's \$10,000,000 Educational Facilities Revenue Note, Series 2015A (Health Sciences Education Facility Corporation Project), dated August 17, 2015, redesignated hereunder as the Educational Facilities Revenue Note, Series 2015A (College of St. Scholastica, Inc.).
- dd. Series B Note: the Issuer's \$6,600,000 Taxable Educational Facilities Revenue Note, Series 2015B (Health Sciences Education Facility Corporation Project), dated August 17, 2015, and reissued on May 5, 2016, as the Issuer's the \$6,600,000 Educational Facilities Revenue Note, Series 2015B (Health Sciences Education Facility Corporation Project), redesignated hereunder as the Educational Facilities Revenue Note, Series 2015B (College of St. Scholastica, Inc.).
- ee. State: the State of Minnesota.

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

- a. In the Assignment and Assumption Agreement, the Original Borrower assigns all its rights and obligations with respect to the Project and the Loan Documents to the New Borrower and the New Borrower agrees to assume all the Original Borrower's rights and obligations with respect to the Project and the Loan Documents. The Purchaser consents to the Assignment and Assumption Agreement and the Issuer acknowledges the Assignment and Assumption Agreement.
- b. In the 2020 Loan Agreement, the Issuer loans the proceeds of the Notes to the New Borrower, and the New 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 Notes in full when due. The 2020 Loan Agreement replaces the Original Loan Agreement in its entirety.
- c. In the 2020 Assignment Agreement, the Issuer pledges and grants a security interest in all of its rights, title and interest in the 2020 Loan Agreement (except for certain rights of the Issuer to payment, indemnification and enforcement) to the Purchaser. The 2020 Assignment Agreement replaces the Original Assignment Agreement in its entirety.

- d. In the 2020 Mortgage, the New Borrower secures its obligations under the 2020 Loan Agreement, including the payment of amounts due under the 2020 Loan Agreement, by granting to the Purchaser a first mortgage interest in the property described in the 2020 Mortgage. The 2020 Mortgage replaces the Original Mortgage in its entirety.
- e. In the 2020 Security Agreement, the New Borrower further secures its obligations under the 2020 Loan Agreement, including the payment of amounts due under the 2020 Loan Agreement, by granting to the Purchaser a first lien on the personal property described in the 2020 Security Agreement. The 2020 Security Agreement replaces the Original Security Agreement in its entirety.

Section 3. Recitals Regarding Proceedings. The Board of Commissioners makes the following recitals of fact:

- a. The Board of Commissioners held a public hearing on the issuance of the Notes on July 15, 2015 after published notice. An opportunity to speak was given to those attending the public hearing.
- b. The Project and issuance of the Notes have been approved by DEED.
- c. Drafts of the Documents have been submitted to the Issuer and are on file in the office of the Executive Director.
- d. Bond Counsel has advised the Issuer that the transactions described herein are authorized and permitted by the Act.

Section 4. Recitals Regarding the Borrowers and the Project. The Board of Commissioners has been advised by representatives of the New Borrower:

- a. that it wishes to assume the obligations of the Original Borrower under the Original Documents in order to provide for more efficient management of its operations and lower annual operating costs;
- b. that it will pay any and all costs incurred by the Issuer in connection with the matters described in this Resolution and the redesignation of the Notes, whether or not carried to completion;
- c. that no public official of the Issuer has either a direct or indirect financial interest in the Project nor will any public official either directly or indirectly benefit financially from the Project;
- d. that it and the Original Borrower are each a Minnesota nonprofit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, the corporate offices of which are located in Duluth, Minnesota;

- e. that no default or event of default exists or is continuing under the Original Documents; and
- f. the Purchaser has agreed to the transactions described in this Resolution.

Section 5. The Notes.

- a. The Series A Note is redesignated as provided in the definition of "Series A Note." The Series B Note is redesignated as provided in the definition of "Series B Note." The remaining terms of the Notes remain unchanged.
- b. The loan repayments to be made by the New Borrower under the 2020 Loan Agreement are fixed to produce revenue sufficient to provide for the prompt payment of principal of, premium, if any, and interest on the Notes when due.
- c. The Notes shall be in substantially the form submitted to the Board of Commissioners, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof as may be necessary and appropriate and approved by Bond Counsel and the New Borrower prior to the execution thereof; and shall mature in the years and amounts, be subject to redemption and bear interest at the rate as therein specified.
- d. The Notes shall be executed on behalf of the Issuer by the signature of its Authorized Officers. The seal of the Issuer may be omitted as allowed by law. In case any officer whose signature shall appear on the Notes shall cease to be such officer before the delivery of the Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. In the event of the absence or disability of the Authorized Officers such officer of the Issuer as may act in their behalf, shall without further act or authorization of the Board of Commissioners execute and deliver the Notes.

Section 6. Approval and Execution of Documents.

- a. The Issuer Documents are made a part of this Resolution as though fully set forth herein and are approved in substantially the forms on file in the office of the Executive Director. The Authorized Officers are authorized and directed to execute, acknowledge and deliver the Issuer Documents on behalf of the Issuer with such changes, insertions and omissions therein as the Issuer's attorney may hereafter deem appropriate, such execution by the Authorized Officers to be conclusive evidence of approval of such documents in accordance with the terms hereof.
- b. The Authorized Officers are authorized and directed to execute and deliver all other documents which may be required under the terms of the Issuer Documents or the Notes or by Bond Counsel, and to take such

other action as may be required or deemed appropriate for the performance of the duties imposed thereby to carry out the purposes thereof.

Section 7. Proceedings; Absent or Disabled Officers.

- a. The Authorized Officers and other officers and members of the Board of Commissioners are authorized to furnish certified copies of this Resolution and all proceedings and records of the Issuer relating to the Notes, and such other affidavits and certificates as may be required to show the facts relating to the Issuer respecting the Notes, as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the Issuer as to the truth of all statements contained therein.
- b. If for any reason the Authorized Officers, any officer, members of the Board of Commissioners, employee or agent of the Issuer authorized to execute certificates, instruments or other written documents on behalf of the Issuer shall for any reason cease to be an officer, employee or agent of the Issuer after the execution by such person of any certificate, instrument or other written document, such fact shall not affect the validity or enforceability of such certificate, instrument or other written document.
- c. If for any reason the Authorized Officers, any officer, member of the Issuer, employee or agent of the Issuer authorized to execute certificates, instruments or other written documents on behalf of the Issuer shall be unavailable to execute such certificates, instruments or other written documents for any reason, such certificates, instruments or other written documents may be executed by a deputy or assistant to such officer, or by such other officer of the Issuer as in the opinion of the Issuer's attorney is authorized to sign such document and do all things and execute all instruments and documents required to be done or executed by such officers, with full force and effect, which executions or acts shall be valid and binding on the Issuer.

Section 8. Registration and Numbering. The Notes shall be issued only in fully registered form. The Notes shall each be numbered R-1 (Redesignated) and upward in denominations specified by the Purchaser. The registration provisions set forth in Resolution 15D-28 adopted by the Issuer on July 22, 2015, remain applicable to the Notes.

Section 9. General Covenants.

- a. *Payment of Principal and Interest.* The principal of and interest on the Notes are payable solely from and secured by revenues and proceeds derived from the Issuer Documents, which revenues and proceeds are

specifically pledged to the payment thereof in the manner and to the extent specified herein and in the Notes and the Documents; and nothing in the Notes or in this Resolution shall be considered as assigning, pledging or otherwise encumbering any other funds or assets of the Issuer.

- b. *Limitation of Liability.* No agreement, covenant, or obligation contained in this Resolution or in the above-referenced documents shall be deemed to be an agreement, covenant or obligation of any member of the Board of Commissioners, or of any officer, employee or agent of the Issuer in that person's individual capacity. Neither the members of the Board of Commissioners, nor any officers executing the Notes, shall be liable personally on the Notes or be subject to any personal liability or accountability by reason of the issuance of the Notes.
- c. *Nature of Security.*
  - i. The Notes are special limited obligations of the Issuer.
  - ii. Notwithstanding anything contained in the Notes or the Documents or any other document referred to herein to the contrary, under the provisions of the Act the Notes may not be payable from or be a charge upon any funds of the Issuer other than the revenues and proceeds pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon, nor shall the Notes otherwise contribute or give rise to a pecuniary liability of the Issuer or any of its officers, employees and agents. Accordingly, the Notes shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon.
  - iii. No holder of the Notes shall ever have the right to compel any exercise of the taxing power of the Issuer to pay the Notes or the interest thereon, or to enforce payment thereof against any property of the Issuer, other than the revenues pledged under the 2020 Assignment Agreement; and the Notes shall not constitute a charge, lien or encumbrance, legal or equitable, upon any funds, assets or property of the Issuer, other than revenues under the 2020 Loan Agreement; and the Notes shall not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness. The Notes will not constitute or give rise to an indebtedness, a pecuniary liability, a moral or general obligation or a loan of the credit of the Issuer or a charge, lien or encumbrance, legal or equitable, against the Issuer's property (other than revenues under the 2020 Loan Agreement), general credit or taxing powers and neither the full faith and credit nor the

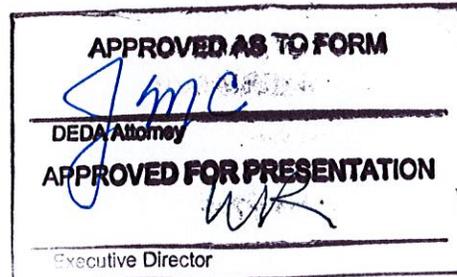
taxing powers of the Issuer are pledged for the payment of the Notes or interest thereon.

Section 10. 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.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE: This resolution approves and authorizes changing the titles (the redesignation) of DEDA's Educational Facilities Revenue Notes, Series 2015, originally issued for the benefit of Health Sciences Education Facility Corporation ("HSEFC") and the execution of related documentation. HSEFC was formed to construct and equip a three-story educational classroom and office building located at 940 Woodland Avenue and leased to CSS for the purpose of graduate level programming in the areas of occupational therapy, physical therapy and physician assistants. The College of St. Scholastica, Inc. ("CSS"), the sole corporate member and affiliate of HSEFC, has determined that it is in the best interests of its operations for it to directly undertake all the payment obligations of HSEFC with respect to the Notes. The documents relating to the Notes will be amended and restated to provide for CSS as the new borrower under the documents. National Bank of Commerce is the payee under the Notes and has agreed to the undertaking by CSS of the obligations of HSEFC.

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**RESOLUTION 20D-20**

**RESOLUTION AUTHORIZING CONVEYANCE OF OLD RAILROAD PROPERTY  
IN LINCOLN PARK TO THE STATE OF MINNESOTA.**

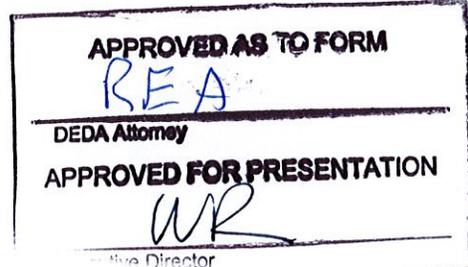
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that

1. DEDA has determined that the conveyance to the State of Minnesota of the property legally described on Exhibits A and B attached hereto and made a part hereof (the "Property") is necessary to the redesign and reconstruction of the Twin Ports Interchange Project by MnDOT and is therefore in the best interests of the City and its people.
2. DEDA further finds that that the conveyance will further the general plan for economic development of the entire City.
3. The Property has a fair market value of \$00.00.
4. The proper DEDA officials are hereby authorized convey the Property legally described in Exhibits A and B attached hereto to the State of at no cost.

Approved by the Duluth Economic Development Authority this 26<sup>th</sup> day of February, 2020.

ATTEST:

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



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize DEDA to convey certain of its property in Lincoln Park to the MnDOT for its use in the redesign and reconstruction of the Twin Ports Interchange (the "can of worms").

The property in question is generally located east of Highway 53, south of Michigan Street and Lower Michigan Street, west of 22<sup>nd</sup> Avenue West and north of I-35. It was originally acquired in the 1990's as part of the Soo Line Railroad property acquisition which facilitated the development of "Lower Michigan Street" through Lincoln Park. The interest held by DEDA is a reversionary right which has no value.

MnDOT has determined that they need to acquire the property as part of the Twin Ports Interchange redesign and reconstruction project. As MnDOT needs it for the Twin Ports Interchange Project, a project which will benefit the City and the entire area, economically as well as in terms of safe and convenient transportation, conveying this property to them will represent the highest and best use of the property.



# RIGHT OF WAY PARCEL LAYOUT



MINNESOTA DEPARTMENT OF TRANSPORTATION

Topographic Information required: Proposed R/W line & access taking.

Lot lines & dimensions.

Show north arrow.

Outline & location of buildings & Improvements. Streets or highway frontage.

C.S. 6982(35=390)906

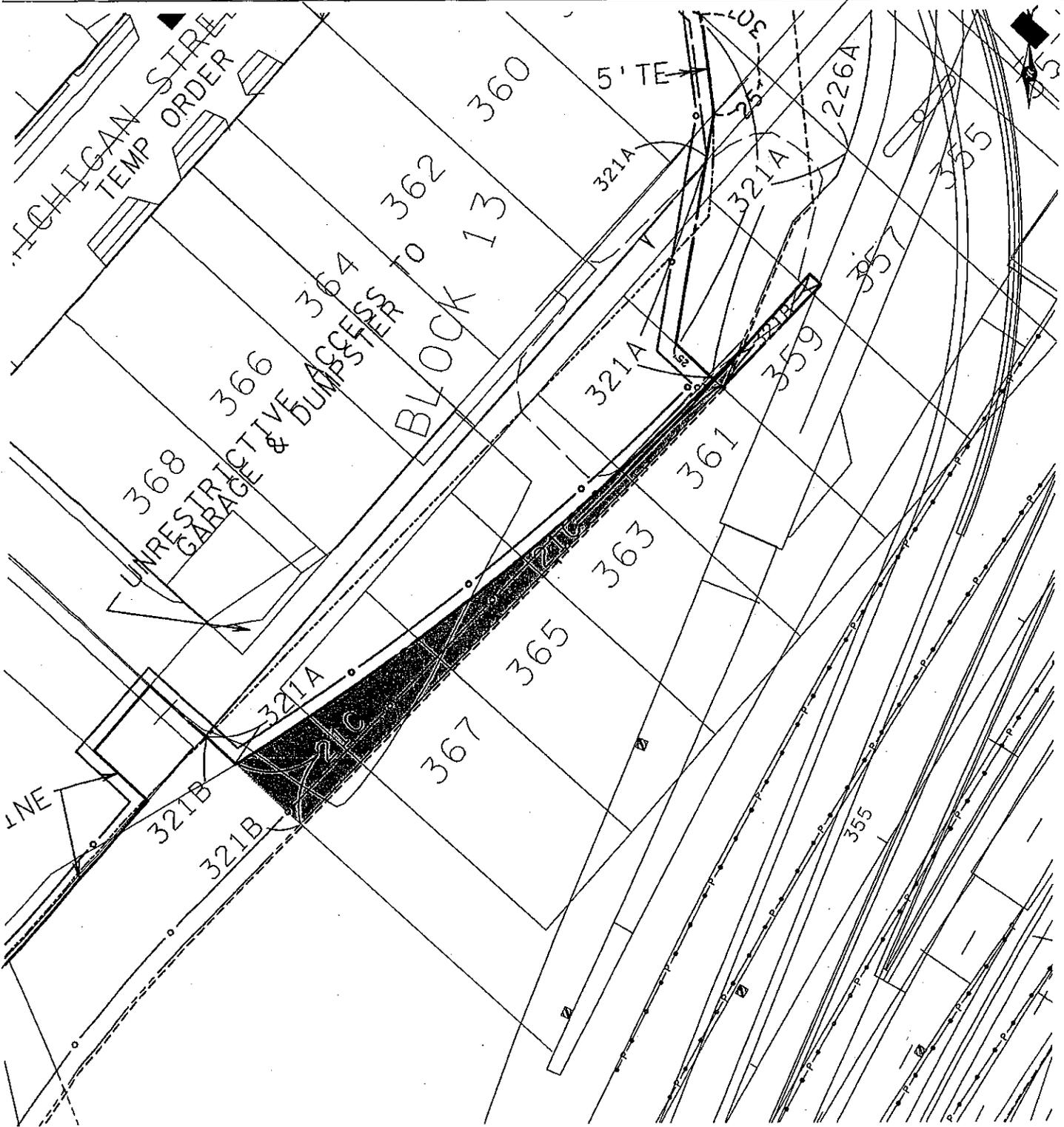
S.P. 6982-322

COUNTY ST LOUIS

PARCEL NO. 21C

OWNER PIRKOLA / DEDA

Scale 1" = 50 ft.



Layout sketch by L PEARSON

Date REV 08/06/19

Parcel No. 21C